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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2151]

PART 2240—SALES AND EXCHANGES

Subpart 2243—Public Sales

§ 2243.0–2 Objectives.

The program of the Secretary of the Interior in the administration of section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), hereinafter referred to as the Act, is to take into consideration the criteria set out in Part 2410 and to order into market on an orderly basis lands subject to the Act which are more valuable or proper for non-Federal than Federal ownership.

§ 2243.0–3 Authority.

Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171) authorizes the Secretary of the Interior to order into market and sell at public auction certain public domain as described in § 2243.0–7.

§ 2243.0–5 Definitions.

As used in the regulations of this part:

(a) The terms "public domain" and "public land" mean vacant, unappropriated, and unreserved public lands, or public lands withdrawn by E.O. 6910 of November 26, 1934, as amended, or E.O. 6964 of February 5, 1935, as amended, and not otherwise withdrawn or reserved, or public lands within grazing districts established under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended, and not otherwise withdrawn or reserved. Such lands must be officially surveyed.

(b) The terms "appraised value" and "appraised price" mean the amount of money specified as the minimum acceptable bid in the public notice ordering lands into market under the regulations of this part.

(c) The terms "contiguous lands" and "contiguous legal subdivisions" mean lands or legal subdivisions having a common boundary.

(d) The term "isolated or disconnected tract" means a tract of one or more contiguous legal subdivisions completely surrounded by lands held in non-Federal ownership or so effectively separated from other federally-owned lands by some permanent withdrawal or reservation as to make its use with such lands impracticable. A tract is considered isolated if the contiguous lands are all patented, even though there are other public lands cornering upon the tract. The term "cornering" refers to lands having a common survey corner but not a common boundary.

(e) The term "mineral in character" refers to lands where the mineral is ordinarily in sufficient quantity to add to their richness and to justify expenditures for its extraction. A "mineral" is a substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject or (2) is classified as mineral product in trade or commerce; or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts. However, the word "mineral", for the purposes of the regulations of this part, does not include those that must be reserved to the United States pursuant to the regulations in §§ 2023.0–3 to 2023.5–4.

(f) The term "proper land office" means the land office of the Bureau of Land Management for the State or Land district in which the lands are situated. For lands in States for which there are no land offices, it means the Bureau of Land Management, Washington, D.C., 20240, except that for lands in North Dakota or South Dakota, it means the land office in Billings, Montana, for lands in Nebraska or Kansas, the land office in Cheyenne, Wyoming, and for lands in Oklahoma, the land office at Sante Fe, New Mexico.

(g) The word "person" includes but is not necessarily limited to individual, partnership, association or corporation.

(h) The word "bid" means a written or oral "offer to purchase."

§ 2243.0–7 Lands subject to sale.

(a) The Act authorizes the Secretary of the Interior to order into market and sell at public auction for not less than the appraised value any isolated or disconnected tract or parcel of the public domain not exceeding 1520 acres which, in his judgment, it would be proper to expose for sale.

(b) The Act also authorizes the Secretary in his discretion, upon application of any person who owns land or holds a valid entry adjoining such tract, to order into market and sell at public auction for not less than their appraised value any legal subdivision or contiguous legal subdivisions of public land not exceeding 760 acres, the greater part of each of which subdivisions is mountainous or too rough for cultivation.

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Circular Distribution List

(c) The Secretary of the Interior has full discretion to determine whether lands should be ordered into market under the regulations of this part. Factors that will be taken into consideration in making these determinations are described in Part 2410. Lands which are mineral in character will not be sold, but this is not to imply that lands which are not mineral in character, as defined in paragraph (e) of § 2243.0–5, will be sold regardless of whether they possess some mineral value, present or prospective.

§ 2243.1 Procedures.

§ 2243.1–1 Petition; application.

(a) Applications, together with petitions as required under Part 2410 (hereinafter called petition-applications), to have tracts ordered into market under the regulations of this part must be made on forms approved by the Director, properly executed and filed in the proper land office.

(b) Each petition-application must be accompanied by a nonrefundable application service charge of $25 and by an additional sum of $50 to defray the costs of publication. This $50 deposit will be returned to the applicant if the authorized officer declines to order lands into market, decides to reject all bids, or sells all the lands to persons other than the applicant. Where the authorized officer sells only part of the lands to the applicant and part to one or more other persons, he will return to the applicant such portion of the deposit as the officer deems equitable.

§ 2243.1–2 Notice; publication, cost.

(a) When the authorized officer determines that lands shall be ordered into market under the regulations in this part, he will have a notice thereof published weekly for five consecutive weeks in an appropriate newspaper in accordance with § 1824.4 of this chapter.

(b) Where lands are sold pursuant to notice prescribed in paragraph (a) of this section, the purchaser or purchasers of the lands will be required to pay the cost of publication of the notice. Where more than one purchaser is involved in a transaction, the costs will be shared in such proportions as the authorized officer deems equitable.

§ 2243.1–3 Bidding: time; place; simultaneous bids.

(a) The time and place for submitting the bids will be specified in the public notice required by § 2243.1–2.

(b) Bids may be made by the principal or his agent, either personally or by mail.

(c) Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice. These bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the Bureau of Land Management for the amounts of the bids plus the cost of publication (see § 2243.1–2), less any amount previously deposited toward publication costs pursuant to paragraph (b) of § 2243.1–1 and must be enclosed in sealed envelopes which must be marked as prescribed in the notice. In the event that valid bids of the same amount are received through the mail from two or more persons, the first in time as shown by the time and date noted by the post office on the envelope will be considered the highest of those bids. If two or more envelopes containing valid bids of the same amount bear the same time and date stamp, they will be considered simultaneously filed. The determination of which is the highest of these bids will be by drawing.

§ 2243.1–4 Action at close of bidding.

(a) *High bidder.* The person who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to complete the purchase in accordance therewith unless his bid is rejected or he is released therefrom by the authorized officer.

(b) *Preference rights.* (1) The owners of contiguous lands will have a period of 30 days, commencing on the day after the close of bidding and the announcement of the amount of the highest bid received, in which to offer to purchase the lands at the highest bid price, or at three times the appraised value, if three times such appraised value is less than the highest bid price. Failure of a preference-right applicant to submit to the authorized officer prior to the termination of the 30-day period an amount equal to his offer plus the cost of publication (see § 2243.1–2) will cause the preference right to be lost as to that particular public sale.

(2) Each preference-right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. The authorized officer will specify that date. Such proof must consist of (i) a certificate of the local recorder of deeds, or (ii) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, or by a duly qualified attorney authorized

to practice in the State stating on the basis of an examination of title records that the applicant owned adjoining land in fee simple on the last day of the 30-day period. If the preference-right applicant does not own adjoining land at the close of the preference-right period, his preference-right claim will be lost. After a case has been closed, the data filed pursuant to this section may be returned by the authorized officer.

(3) Where two or more applicants apply to exercise the preference right provided for by the Act, to the same tract of land, they will be afforded an opportunity to agree among themselves upon a division of the lands. In the absence of an agreement, an equitable division of the land will be made, taking into consideration such factors as (i) the equalizing of the number of acres between the applicants, (ii) desirable land use, based on topography, land pattern, location of water, proper development of the lands, and similar factors, (iii) legitimate historical use, including construction and maintenance of authorized improvements, and (iv) extent of contiguity and duration of ownership of adjacent lands. If considerations dictate, all of the lands may be awarded to one of the applicants.

§ 2243.1–5 Action at close of preference period; acceptance of offer.

(a) After the close of the preference period described in § 2243.1–4(b), the authorized officer will determine whether the lands will be sold. If he determines that they will be sold and if there are no qualified preference applicants or if there is only one qualified preference applicant, he will accept the bid of the highest bidder, in the first instance, or the offer of the preference applicant, in the second. If there are two or more preference applicants, he will give them the opportunity to agree as to the division of the lands (paragraph (b) of § 2243.1–4) and to amend their offers accordingly. If no agreement is reached, he will determine the division of the lands and give the applicants an opportunity to amend their offers accordingly.

(b) The acceptance of an offer to purchase (bid) will be made by the issuance of a final certificate to the bidder. Until the final certificate is issued, the right is reserved to the authorized officer at any time to determine that the sale should not be held, that the lands should not be sold, or that any and all bids should be rejected. Generally, if the high bid is not less than the fair market value of the land on the date for receiving bids as specified in the public notice issued pursuant to § 2243.1–2(a), any appreciation or depreciation thereafter in value of the lands will not necessarily be a basis for a determination that the lands will not be sold. Sales will not be consummated, in the discretion of the authorized officer, when, for example:

(1) Circumstances reveal that the highest bid otherwise acceptable is less than the fair market value of the land on the date of the sale set in the public notice thereof, or

(2) An appropriate public requirement for the lands is identified subsequent to the public notice, or

(3) Collusive or other activities have hindered or restrained free and open bidding.

(c) The petitioner-applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligations of the United States until the final certificate is issued. Issuance of the final certificate, however, will not preclude the Secretary of the Interior from vacating the sale in whole or in part because of fraud not disclosed at the time of issuance of the final certificate or because of lack of knowledge of facts or conditions existing at that time which, if known prior to issuance of the final certificate, would have been grounds for refusing to consummate the sale (see paragraph (b) of this section).

(d) Under the regulations in this chapter relating to grazing, no lands embraced in a grazing lease, license or permit may be sold unless and until the prospective purchaser has made provision for compensation for any grazing improvements placed on the lands.

§ 2243.2 Effect of application.

The filing of a petition-application in conformity with the regulations in this part will not segregate the lands applied for from other petition-applications under the public land laws or defeat a prior valid right initiated under any such law. However, the publication of a notice pursuant to § 2243.1–2 placing lands into market will segregate such lands from all appropriations, including locations under the mining laws, and from other petitions and applications, effective on the date of the first publication of the notice.

STEWART L. UDALL,
Secretary of the Interior.

JULY 21, 1964.

[F.R. Doc. 64–7429; Filed, July 27, 1964; 8:46 a.m.]

This Circular replaces and supersedes all of Circulars 2098, 1939, and 1895 and that portion of Circular 2110 relating to 43 CFR Part 250.

GPO 843-701

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2152]

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

PART 1820—APPLICATION PROCEDURES

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

PART 2210—OCCUPANCY

PART 2220—GRANTS

Fees for Reducing Testimony to Writing

In Subchapter A—General Management (1000) Part 1820—Application Procedures:

In Subpart 1821—Execution and Filing of Forms:

Section 1821.3–5 is deleted in its entirety.

In Subpart 1823—Proofs and Testimony:

1. Paragraph (a) of § 1823.2–4 is amended to read as follows:

§ 1823.2–4 Fees; costs.

(a) Reducing testimony to writing. On all final proofs made before the manager, or before any other officer of the Burcau of Land Management authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until such payment has been made.

2. Paragraph (b) of § 1823.2–4 is deleted in its entirety.

In Subchapter B—Land Tenure Management (2000), Part 2210—Occupancy:

In Subpart 2211—Homesteads:

Paragraph (a) of § 2211.1–3 is amended to read as follows:

§ 2211.1–3 Payments; form of remittance; receipts; notice.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880, as amended (21 Stat. 141, 43 U.S.C. 185) must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the manager, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted until all charges have been paid.

* * * * *

In Part 2220—Grants, Subpart 2226—Desert Land Act:

Section 2226.3–2 is amended to read as follows:

§ 2226.3–2 Amounts to be paid.

No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335, 337, 338) or February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making the final proof. On all final proofs made before the manager, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

STEWART L. UDALL,
Secretary of the Interior.

JULY 25, 1964.

[F.R. Doc. 64–7639; Filed, July 30, 1964; 8:47 a.m.]

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Circular Distribution List

GPO 843-811

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

(Circular No. 2134)

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

PART 1820—APPLICATION PROCEDURES

SUBCHAPTER B—LAND ROUND MANAGEMENT (1000)

PART 2210—OCCUPANCY

PART 2220—GRANTS

Fees To Be Reducing Testimony To Writing

Circular No. 2153

Regulations pertaining to

MINERAL LEASING and PIPELINES on the OUTER CONTINENTAL SHELF

as contained in

TITLE 43 of the CODE of FEDERAL REGULATIONS

July 23, 1964

TABLE OF CONTENTS

TITLE 43 – PUBLIC LANDS: INTERIOR
CHAPTER II – BUREAU OF LAND MANAGEMENT

Part 2230 – Special Uses
Section 2234.5–3 – For Pipe Lines on the Outer Continental Shelf 14

Part 3380 – Outer Continental Shelf Mineral Deposits
Subpart 3380 – Outer Continental Shelf Mineral Deposits; General 17
Subpart 3381 – Cooperative Conservation Provisions 18
Subpart 3382 – Issuance of Leases 19
Subpart 3383 – Rentals and Royalties 21
Subpart 3384 – Bonds 22
Subpart 3385 – Assignments or Transfers 23
Subpart 3386 – Termination of Leases 24
Subpart 3387 – Mineral Deposits Affected by Section 6 of the Outer Continental Shelf Lands Act 24

Part 2230 – Special Uses
* * * * *

§ 2234.5–3 For pipe lines on the Outer Continental Shelf (Act of August 7, 1953).

(a) *Purpose and authority.* (1) Section 5(c) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 464), authorizes the Secretary of the Interior to grant rights-of-way for pipeline purposes for the transportation of oil and gas. The purpose of the regulations in this part is to set forth the rules governing the granting and administration of such rights-of-way. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands or to rights-of-way thereon are applicable to the submerged lands of the Outer Continental Shelf.

(2) Compliance with the regulations of this part does not obviate the necessity of compliance with requirements and regulations of the Department of the Army and the Coast Guard with respect to prevention of obstruction to navigation, lights, and warning devices, and other matters relating to safety of life and property, as authorized by section 4 of the act.

(b) *Definitions.* (1) "Secretary" means Secretary of the Interior.

(2) "Director" means Director, Bureau of Land Management.

(3) "Manager" means the officer in charge of the local office of the Bureau of Land Management.

(4) "Right-of-way" includes the site on which the pipe line and associated structures are situated which shall not exceed 200 feet in width for pipe lines and be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage, or treating of the production from a lease or leases. The construction of gathering lines may be approved by the Oil and Gas Supervisor in accordance with the provisions of 30 CFR 250.18 and 250.68.

(c) *Procedures*—(1) *Application*—(i) *Form and requirements.* No special form of application is required. The application should be filed in duplicate and should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the act and these regulations and that applicant agrees that the right-of-way if approved will be subject to the terms and conditions of the regulations in this part. It should also state the primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the office of the Manager. If the right-of-way has been utilized prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date applicant obtained control of the improvements. A filing fee of $10 and the rental required herein under subparagraph (4)(v) of this paragraph, must accompany the application.

(ii) *Map showing survey.* Each copy of the application must be accompanied by a map , showing the center line of the right-of-way, properly identified so that the right-of-way may be accurately located by a competent engineer. The map should comply with the following requirements:

(*a*) The scale shall be at least 1:160,000.

(*b*) Courses and distances of the center line of the right-of-way shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(*c*) The total distance and width of the right-of-way shall be given, and the diameter of the pipe line specified.

(*d*) The initial and terminal points of the right-of-way shall be accurately located by latitude and longitude or by grid references.

(*e*) Each copy of the map shall bear upon its face a statement of the engineer who made the map that the right-of-way is accurately represented upon the map.

(2) *Persons qualified to acquire and hold rights-of-way.* (i) Applications may be filed by citizens of the United States, associations of such citizens, and by corporations organized under the laws of the United States or of any State or Territory thereof.

(ii) An individual and each member of an association applying for a right-of-way must state in the application whether he is a native-born or naturalized citizen of the United States.

(iii) (*a*) A private corporation must file a certified copy of its charter or articles of incorporation.

(*b*) A corporation other than a private one must file a copy of the law

under which it was organized and proof of its organization..

(*c*) A copy of the resolution or by-laws of the corporation authorizing the filing of the application or a certificate of the Secretary or an assistant Secretary of the corporation under the corporate seal certifying that the officer executing the application has authority to do so, must be filed. If the application is filed by an attorney-in-fact a certified copy of the resolution of the Board of Directors authorizing his appointment and an executed copy of the power of attorney must be filed.

(*d*) If the corporation has previously filed any or all of the papers required in (*a*), (*b*), and (*c*) of this subdivision, specific reference to such filing giving date, place, and case number will be accepted as full compliance with such requirements.

(3) *Consent of or notice to lessee or right-of-way holder of area crossed or invaded by right-of-way.* An applicant must show the extent to which the right-of-way applied for invades or crosses mineral leases or rights-of-way other than his own and must submit with his application either the written consent of each lessee or right-of-way holder whose lease or right-of-way is so affected or a statement that he has delivered to each lessee or right-of-way holder whose lease or right-of-way is so affected personally or by registered or certified mail a copy of the application and map. If the statement is filed no final action will be taken on the right-of-way application until 15 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to file protests against granting of the right-of-way.

(4) *Terms and conditions.* An applicant by accepting a right-of-way grant, agrees and consents to comply with and be bound by the following terms and conditions, accepting those which the Secretary may waive in a particular case:

(i) To comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf and the protection of correlative rights therein.

(ii) To pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and to indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way.

(iii) To keep the Director informed at all times of his address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision in all subcontracts.

(iv) That the allowance of the right-of-way shall be subject to the express condition that the rights granted will not prevent or interfere in any way with the management, administration of, or the granting either prior or subsequent to the right-of-way grant of other rights by the United States in the submerged lands affected thereby, and that he agrees and consents to the occupancy and use by the United States or its lessees or other right-of-way holders of any part of the right-of-way not actually occupied or necessarily incident to its use for any necessary operations involved in such management, administration or the enjoyment of such other granted rights.

(v) To pay for the first calendar year or fraction thereof, and thereafter annually in advance an annual rental of $5 for each mile or fraction thereof traversed by the right-of-way and $50 for each area applied for as the site for a pumping station or other accessory to the right-of-way. Payments required herein may be annual, for a 5-year period or for multiples of such period.

(vi) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Manager, he shall, so far as reasonably possible, restore the area of the right-of-way to its original condition.

(d) *Approval of right-of-way.* If the application and other required information are found to be in compliance with

the law and regulations and the consents required by paragraph (c) (3) of this section have been obtained or any protests filed as therein provided have been rejected, the right-of-way will be granted. If the right-of-way as applied for would cross any area withdrawn from disposal or restricted from exploration and operation it will be rejected unless the Federal agency in charge of withdrawn or restricted area shall give its consent to the granting of the right-of-way, but in such case the applicant upon request filed within 30 days after receipt of the rejection notice will be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(e) *Term of grant.* Any right-of-way granted hereunder shall be for so long as the pipe line is maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Cessation of use temporarily shall not terminate the grant, but if the purpose of the grant ceases to exist or use of the pipe line is permanently discontinued for any reason the grant shall be subject to forfeiture.

(f) *Construction*—(1) *Proof of construction.* Failure to construct the pipe line within 5 years from the date of the grant shall be deemed to be an abandonment of the grant which will be forfeited by an appropriate proceeding. Proof of construction shall be submitted to the Manager. Such proof shall consist of a statement by the holder of the right-of-way that the pipe line has been laid and is in operation. If there is any deviation from the right-of-way as shown on the original map, the unused portion of the grant must be relinquished and maps in duplicate of the location of the right-of-way as constructed, prepared in accordance with paragraph (c) (1) of this section must be furnished as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat will be at the risk of the right-of-way holder.

(2) *Advance permission to commence construction.* Upon a satisfactory showing of the need therefor, the Director may grant permission to commence construction of a pipe line in advance of any grant of the right-of-way but such permission is not a commitment that the right-of-way will be approved and all work done thereunder prior to the granting of the right-of-way will be at the applicant's risk. No advance permission will be granted for an area or areas not subject to a right-of-way grant.

(g) *Assignment of right-of-way.* Assignment may be made of a right-of-way in whole or as to any lineal segment thereof after construction subject to the approval of the Manager. Any such assignment must be filed in duplicate accompanied by an application for approval in which the assignee must make the showing required by paragraph (c) (2) of this section and agree to the terms and conditions prescribed in paragraph (c) (4) of this section. No assignment shall be effective to transfer any rights until it is approved. A fee of $10 must accompany the application for the approval of an assignment.

(h) *Penalty for failure to comply.* As provided in the act, failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the application therefor and the survey, location and width thereof and upon the express condition that such oil or gas pipe lines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipe line in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things conservation and the prevention of waste, be grounds for forfeiture of the grant in an appropriate, judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 4(b) of the act. Upon relinquishment of any right-of-way or forfeiture of the grant, the right-of-way owner will be required to remove his improvements within one year from the effective date of such relinquishment or forfeiture unless otherwise provided by law or in the decree of forfeiture.

(Sec. 5, 67 Stat. 464; 43 U.S.C. 1334)

PART 3380—OUTER CONTINENTAL SHELF MINERAL DEPOSITS

Subpart 3380—Outer Continental Shelf Mineral Deposits; General

Sec.
3380.0–3 Authority.
3380.1 Persons qualified to hold leases.
3380.2 Leasing Maps.
3380.3 Helium.
3380.4 Payments of filing charges, bonuses, rentals and royalties.

Subpart 3381—Cooperative Conservation Provisions

3381.1 Unit plans, pooling, and drilling agreements.
3381.2 Application for approval of unit plan.
3381.3 Pooling or drilling agreements.
3381.4 Subsurface storage of oil or gas.
3381.5 Directional drilling.

Subpart 3382—Issuance of Leases

3382.1 Kind and term.
3382.2 Extension of leases by drilling or well reworking operations.
3382.3 Notice of lease offer.
3382.4 What must accompany bids.
3382.5 Award of lease.
3382.6 Form.
3382.7 Dating of leases.

Subpart 3383—Rentals and Royalties

3383.1 Rentals.
3383.2 Royalties.
3383.3 Minimum royalty.
3383.4 Compensatory payments, extension of lease.
3383.5 Suspension of operations and production; royalty and rental relief.

Subpart 3384—Bonds

3384.1 Amount of bond required of lessee.
3384.2 Form of Bond.

Subpart 3385—Assignments or Transfers

3385.1 Assignment of leases or interests therein.
3385.2 Requirements for filing of transfers.
3385.3 Separate assignments required for transfer of record title to leases.
3385.4 Effect of assignment of particular tract.

Subpart 3386—Termination of Leases

3386.1 Relinquishment of leases or parts of leases.
3386.2 Cancellation of leases.

Subpart 3387—Mineral Deposits Affected by Section 6 of Outer Continental Shelf Lands Act

3387.1 Effect of regulations on provisions of lease.
3387.2 Leases of other minerals.
3387.3 Obligations of lessee.
3387.3–1 Bonds.
3387.3–2 Wells.
3387.3–3 Inspection.
3387.3–4 Diligence; compliance with regulations and orders.
3387.3–5 Freedom of purchase.
3387.3–6 Removal of property on termination of lease.
3387.4 Exploration and operations.
3387.4–1 Purchase of production.
3387.4–2 Suspension of operations during war or national emergency.
3387.4–3 Restriction of exploration and operations.
3387.4–4 Geological and geophysical exploration; rights-of-way.
3387.4–5 Leases of sulphur and other mineral.
3387.5 Remedies in case of default.
3387.6 Heirs and successors in interest.

AUTHORITY: The provisions of this Part 3380 issued under sec. 15, 67 Stat. 464; 43 U.S.C. 1334. Interpret or apply secs. 6, 8, 67 Stat. 465, 468; 43 U.S.C. 1335, 1337.

Subpart 3380—Outer Continental Shelf Mineral Deposits; General

§ 3380.0–3 Authority.

The Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462), referred to in this part as "the act", among other things, authorizes the Secretary of the Interior to issue on a competitive basis leases for oil and gas, sulphur, and other minerals in submerged lands of the outer Continental Shelf, as defined in section 2 of the act. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands are applicable to the submerged lands of the outer Continental Shelf.

§ 3380.1 Persons qualified to hold leases.

Mineral leases issued pursuant to section 8 of the act may be held only by citizens of the United States over 21 years of age, associations of such citizens, States, political subdivisions of a State, or private, public, or municipal corporations organized under the laws of the United States or of any State or Territory thereof.

§ 3380.2 Leasing maps.

(a) Any area of the outer Continental Shelf which has been appropriately platted as provided in paragraph (b) of this section is subject to lease for any mineral not included in

a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act, unless before any lease is offered or issued the unit is (1) withdrawn from disposition pursuant to section 12(a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the act.

(b) As the need arises, the Bureau of Land Management will prepare official leasing maps of areas of the outer Continental Shelf, which will be made to conform so far as practicable to the method of tract designation established by the adjoining State. The area included in each mineral lease shall be described in accordance with the official leasing map.

(c) Each oil and gas lease issued pursuant to section 8 of the act shall cover a compact area, which shall not exceed 5,760 acres.

§ 3380.3 Helium.

Each lease issued or continued under the act shall be subject to a reservation by the United States of the ownership of and the right to extract helium from all gas produced from the leased area, subject to such rules and regulations as shall be prescribed by the Secretary of the Interior. In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area in the manner required by the United States, for the extraction of helium in such plant or reduction works for that purpose as the United States may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof. The lessee shall not suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which he is not reasonably compensated, save for the value of the helium extracted. The United States shall have the right to erect, maintain, and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium.

§ 3380.4 Payments of filing charges, bonuses, rentals and royalties.

All payments to the United States required by the act or the regulations in this part shall be made to the oil and gas supervisor of the Geological Survey for the region in which the leased area is situated, except that payments of filing charges, bonuses and first year's rental shall be made to the manager of the appropriate field office, Bureau of Land Management, unless otherwise directed by the Secretary. All payments should be made by check, bank draft, or money order payable to the United States Geological Survey, if the payments are made to the Geological Survey, or to the Bureau of Land Management, if the payments are made to that Bureau.

Subpart 3381—Cooperative Conservation Provisions

§ 3381.1 Unit plans, pooling, and drilling agreements.

Section 5(a)(1) of the act authorizes the Secretary in the interest of conservation to provide for unitization, pooling and drilling agreements. Such agreements may be initiated by lessees or where in the interest of conservation they are deemed necessary they may be required by the Secretary.

§ 3381.2 Application for approval of unit plan.

The procedure for obtaining the approval of a unit plan of development is contained in 30 CFR Part 226. "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit areas is situated.

§ 3381.3 Pooling or drilling agreements.

(a) With the approval of the Secretary, pooling or drilling agreements may be made between lessees for the purposes of (1) utilizing a common drilling platform to develop adjacent or adjoining leases; (2) permitting operators or pipeline companies to enter into contracts involving a number of leases sufficient to justify operations on a large scale for the discovery, development, production or transporation of oil and gas, sulphur, or other minerals and to finance the same; or (3) for other purposes in the interest of conservation.

(b) A contract submitted for approval under these provisions should be filed

with the oil and gas supervisor, together with enough copies to permit retention of 5 copies by the Department after approval. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination and prescribe the conditions on which the contract is approved.

§ 3381.4 Subsurface storage of oil or gas.

(a) In order to avoid waste or to promote conservation of natural resources, and when it can be shown that no undue interference with operations under existing leases will result, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil or gas in the lands of the outer Continental Shelf, whether or not produced from the outer Continental Shelf. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in any lease of the area involved when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease of an area used for the storage of oil or gas shall not be deemed to expire during the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands or interests in the lands involved, the parties in interest, including lessees of other mineral interests, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such storage. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

§ 3381.5 Directional drilling.

A lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directionally drilling under the leased area through any directional well surfaced on adjacent or adjoining land, and production, drilling, or reworking of any such directional well shall be considered production or drilling or reworking operations (as the case may be) on the leased area for all purposes of the lease.

Subpart 3382—Issuance of Leases

§ 3382.1 Kind and term.

In accordance with the provisions of section 8 of the act, all leases will be issued competitively upon the Department's motion or upon a request describing the area and expressing an interest in leasing a unit or units addressed to the Director, Bureau of Land Management, Washington 25, D.C., hereinafter referred to as the Director, with a copy to the oil and gas supervisor. From time to time the Director may issue calls for the submission of requests for oil and gas or other mineral lease offerings in specified areas. Leases will be awarded to the highest qualified bidder on the basis specified in the notice of lease offer. All oil and gas leases shall be for a term of 5 years and so long thereafter as oil or gas may be produced from the leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted thereon. All sulphur leases shall be for a term of 10 years and so long thereafter as sulphur may be produced from the leased area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon. Other mineral leases shall be for such terms as may be prescribed by the Secretary at the time of offering the leases.

§ 3382.2 Extension of leases by drilling or well reworking operations.

(a) The Secretary shall be deemed to have approved, within the meaning of section 8(b)(2) of the Outer Continental Shelf Lands Act, drilling or well reworking operations, conducted on the leased area in the following instances:

(1) If, after discovery of oil or gas in paying quantities has been made on the leasehold, and within 90 days prior to

expiration of the five-year term or any extension thereof, or thereafter, the production thereof shall cease at any time, or from time to time, from any cause and production is restored or drilling or well reworking operations are commenced within 90 days thereafter, and such drilling or well reworking operations (whether on the same or different wells) are prosecuted diligently until production is restored in paying quantities.

(2) If, within 90 days prior to expiration of the five-year term or any extension thereof, or thereafter, at any time, or from time to time, lessee is engaged in drilling or well reworking operations on the leasehold and there is no well on the leasehold capable of producing in paying quantities and the lessee diligently prosecutes such operations (whether on the same or different wells) with no cessation of more than 90 days.

(b) The Secretary may approve such other operations for drilling or reworking upon application of lessee.

(c) Nothing in this section obviates the necessity of obtaining the Oil and Gas Supervisor's approval of a plan or notice of intention to drill or of complying with the other provisions of 30 CFR Part 250.

§ 3382.3 Notice of lease offer.

Notice of the offer of lands for lease will be given by publication at the expense of the United States in the FEDERAL REGISTER, as the official publication, and in such other publications as may be authorized and the first publication shall be at least 30 days prior to the date of sale. The notice will set the place, date, and hour at which the bids will be opened. All sealed bids in response to any such notice must be filed at the place, and prior to the time set for opening bids. The notice may contain special conditions which will become part of the lease to be issued.

§ 3382.4 What must accompany bids.

(a) A separate bid must be submitted for each lease unit described in the notice of lease offer. A bid may not be submitted for less than an entire unit. Each bidder must submit with his bid a certified or cashier's check or bank draft on a solvent bank, or a money order or cash, for one-fifth of the amount of the cash bonus. If the bidder is an individual, he must submit with his bid a statement of his citizenship. If the bidder is an association (including a partnership), the bid shall be accompanied also by a certified copy of the articles of association or appropriate reference to the record of the Bureau of Land Management in which such a copy has already been filed, with a statement as to any subsequent amendments. If the bidder is a corporation, the following additional information shall be submitted with the bid.

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the by-laws indicating that the person signing the bid has authority to do so, or, in lieu of such a copy, a certificate by the secretary or the assistant secretary of the corporation to that effect, over the corporate seal or appropriate reference to the record of the Bureau of Land Management in connection with which such articles and authority have been previously furnished.

(b) All bidders are warned against violation of the provisions of Title 18 U.S.C. section 1860, prohibiting unlawful combination or intimidation of bidders.

§ 3382.5 Award of lease.

Following the public opening of the sealed bids as provided for in the notice of lease offer, the authorized officer, subject to his right to reject any and all bids will award the lease to the successful bidder. In the event the highest bids are tie bids, tie bidders may file with the Director within 15 days after notification an agreement to accept the lease jointly, othewise all bids will be rejected. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened, all bids for such lease will be considered rejected. Notice of his action will be transmitted promptly to the several bidders. If the lease is awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from his receipt thereof to execute them, pay the first year's rental, the balance of the bonus bid, and file a bond as required in § 3384.1. Deposits on rejected bids will be returned. If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations,

his deposit will be forfeited and disposed of as other receipts under the act. If before the lease is executed on behalf of the United States the land is withdrawn or restricted from leasing, all payments made by the bidder will be refunded. If the awarded lease is executed by an agent acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the agent to execute the lease. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed on behalf of the United States, and one fully executed copy will be mailed to the successful bidder.

§ 3382.6 Form.

Oil and gas leases and leases for sulphur will be issued on forms approved by the Director. Other mineral leases will be issued on such forms as may be prescribed by the Secretary.

§ 3382.7 Dating of leases.

All leases issued under the regulations in this part will be dated and become effective as of the first day of the month following the date the leases are signed on behalf of the lessor, except that, when prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

Subpart 3383—Rentals and Royalties

§ 3383.1 Rentals.

An annual rental shall be due and payable in advance on the first day of each lease year prior to discovery at the rate specified in the lease. The owner of any lease created by the assignment of a portion of a producing lease and on which assigned portion there is no discovery shall be required to pay an annual rental for such assigned portion at the rate per acre specified in the lease payable each lease year following the year in which the assignment became effective and prior to a discovery on such segregated portion.

§ 3383.2 Royalties.

Royalties shall be at the rate specified in the lease but in no event shall the royalty on oil and gas be less than 12½ percent of the amount or value of the production saved, removed or sold from the lease, nor on sulphur less than 5 percent of the gross production of value of the sulphur at the wellhead.

§ 3383.3 Minimum royalty.

Each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 3383.4 Compensatory payments, extension of lease.

In the event that an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and in the event that the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

§ 3383.5 Suspension of operations and production; royalty and rental relief.

(a) In addition to the provisions of section 12 (c) and (d) of the act, in the event that the Director of the Geological Survey in the interest of conservation directs the suspension of both operations and production with respect to any lease no payment of rental or royalty will be required during the period of suspension; and the term of the lease will be extended by a period equivalent to the period of suspension. In the event that the Director of the Geological Survey assents, at the request of a lessee, to a suspension of both operations and production under a lease or directs or assents to a suspension of operations only or production only, the term of the lease will not be deemed to expire so long as the suspension remains in effect but the lessee will not be relieved of his obligation to pay rental, minimum royalty, or royalty, as the case may be, during the term of suspension. In the event a leased area contains only a well or wells capable of producing gas in paying quantities but which gas cannot be produced because of the lack of transportation facilities, the Director of the Geological Survey shall, upon application, grant producing relief subject to the conditions of this paragraph for a maximum period not to exceed five years commencing with the lease year beginning

on or after the date of discovery, or the effective date of the regulations in this part, whichever is later. Any further suspension will be granted only pursuant to the other provisions of this paragraph. As to leases maintained under section 6 of the act which cover minerals in addition to oil and gas, suspensions may be made separately as to oil and gas or as to any other mineral designated in the suspension, order, or grant.

(b) In order to increase the ultimate recovery of minerals and in the interest of conservation, the Director of the Geological Survey, whenever he determines it necessary to promote development or finds that a lease cannot be successfully operated under the terms provided therein, may reduce the rental, minimum royalty, or royalty on the entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes. An application for any of the above relief shall be filed in triplicate with the Director of the Geological Survey. It must contain the serial number of the lease; the name of the record title holder; a description of the area included in the lease; the number, location, and status of each well that has been drilled; a tabulated statement for each month, covering a period of not less than six months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of expenses and costs of operating the entire lease and of the income from the sale of any leased products, and all facts tending to show whether the wells or workings can be successfully operated upon the rental or royalty fixed in the lease. Where the application is for a reduction of royalty, full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid, and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

Subpart 3384—Bonds

§ 3384.1 Amount of bond required of lessee.

The successful bidder prior to the issuance of an oil and gas or sulphur lease must furnish a corporate surety bond in the sum of $15,000 conditioned on compliance with all of the terms of the lease, unless he already maintains or furnishes a bond in the sum of $100,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by him on the Outer Continental Shelf in the (a) Gulf of Mexico, (b) along the Pacific Coast, or (c) along the Atlantic Coast, as may be appropriate. An operator's bond in the same amount may be substituted at any time for the lessee's bond. The United States reserves the right to require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary. The amount of bond coverage on leases for other minerals will be determined at the time of the offer to lease and will be stated in the notice of lease offer. Where upon a default, the surety on an Outer Continental Shelf Mineral Lease Bond makes payment to the Government of any indebtedness under a lease secured thereby, the face amount of such bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond, the principal shall post a new bond, on a form approved by the Director, in the amount of $100,000 within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any bond in force at the time of the approval of the amendment of this section by filing in the local office of the Bureau of Land Management in New Orleans, Louisiana, a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this section.

§ 3384.2 Form of bond.

Bonds furnished by lessee or operator for a single lease will be on forms approved by the Director. The $100,000 bond will be on a form approved by the Director.

Subpart 3385—Assignments or Transfers

§ 3385.1 Assignment of leases or interests therein.

Leases, or any undivided interest therein, may be assigned in whole or as to any officially designated subdivision subject to the approval of the authorized officer, to any one qualified under § 3380.1 to take and hold a lease. Any assignment made under this section shall, upon approval, be deemed to be effective on and after the first day of the lease month following its filing in the Bureau of Land Management, Washington 25, D.C., unless at the request of the parties an earlier date is specified in the Director's approval. The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

§ 3385.2 Requirements for filing of transfers.

(a) (1) All instruments of transfer of a lease or of an interest therein, including operating agreements, subleases, and assignments of record interests, must be filed in triplicate for approval within 90 days from the date of final execution with a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and must contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests, or payments out of production, may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or sublease signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney in fact to execute the assignment or application and the statement required by § 3382.4.

(c) Where an assignment creates a segregated lease a bond must be furnished in the amount prescribed in § 3384.1. Where an assignment does not create separate leases the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) In order for the heirs or devisees of a deceased holder of a lease, or any interest therein, to be recognized by the Department as the lawful successor to such lease or interest, evidence of their status as such heirs or devisees must be furnished in the form of a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will, and, in all cases, the statements of the heirs or devisees that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 3382.4. In the event such heirs or devisees are unable to qualify to hold the lease or interest they will nevertheless be recognized as the lawful successors of the deceased for a period of not to exceed 2 years from the date of death of their predecessor in interest.

§ 3385.3 Separate assignments required for transfer of record title to leases.

A separate instrument of assignment must be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 3385.4 Effect of assignment of particular tract.

(a) When an assignment is made of all of the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into

separate and distinct leases. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease from the United States in his own name, and the assignment after its approval will be the basis of a new record. Royalty, minimum royalty, and rental provisions of the original lease shall apply separately to each segregated portion.

(b) In the case of an assignment of a portion of an oil and gas lease the segregated leases shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas may be produced from the original leased area in paying quantities or drilling or well reworking operations as approved by the Secretary are conducted thereon.

Subpart 3386—Termination of Leases

§ 3386.1 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the Director's office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to abandon all wells on the land to be relinquished to the satisfaction of the oil and gas supervisor.

§ 3386.2 Cancellation of leases.

Any nonproducing lease issued under the act may be canceled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations in force and effect on the date of the issuance of the lease, if such failure to comply continues for 30 days after mailing of notice by registered letter to the lease owner at his record post office address. Any such cancellation is subject to judicial review as provided in section 8(j) of the act upon the complaint of any person. Producing leases issued under the act may be canceled for such failure only by judicial proceedings in the manner prescribed in section 5(b) (2) of the act. Any lease issued under the act, whether producing or not, will be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

Subpart 3387—Mineral Deposits Affected by Section 6 of Outer Continental Shelf Lands Act

§ 3387.1 Effect of regulations on provisions of lease.

(a) As contemplated by section 6(b) of the act, the preceding regulations in this part so far as they are applicable and the following regulations will supersede the provisions of any lease which is determined to meet the requirements of section 6(a) of the act, to the extent that they cover the same subject matter, with the following exceptions: The provisions of a lease with respect to the area covered by the lease, the minerals covered by the lease, the rentals payable under the lease, the royalties payable under the lease (subject to the provisions of sections 6(a)(8) and 6(a)(9) of the act), and the term of the lease (subject to the provisions of section 6(a)(10) of the act and, as to sulphur, subject to the provisions of section 6(b)(2) of the act) shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over those regulations.

(b) A lease that meets the requirements of section 6(a) of the act shall also be subject to all operating and conservation regulations applicable to the outer Continental Shelf, as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the outer Continental Shelf, to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease. Nothing herein should be construed to waive compliance with any provision of any State lease the subject matter of which is not covered in the regulations in this part.

§ 3387.2 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the act will not preclude the issuance of other leases of the same area for deposits of other minerals: *Provided,* That no lease of minerals other than those covered by the lease shall authorize or permit the

lessee thereunder unreasonably to interfere with or endanger operations under the existing lease: *And provided further,* That no sulphur leases will be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the act.

§ 3387.3 Obligations of lessee.

§ 3387.3–1 Bonds.

Within 30 days from the effective date of the regulations in this part or within such further period or periods as may be fixed from time to time by the authorized officer, the lessee under a lease meeting the requirements of section 6(a) of the act must furnish a bond as provided in § 3384.1.

§ 3387.3–2 Wells.

(a) After due notice in writing, the lessee shall drill and produce such wells as the Secretary may reasonably require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with good operating practice.

(b) At the election of the lessee, the lessee may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the area, field, or pool in which the leased area or any part thereof is situated, which is authorized or sanctioned by applicable law or by the Secretary.

(c) The lessee shall drill and produce such wells as are necessary to protect the lessor from loss by reason of production on other properties, or in lieu thereof, with the consent of the oil and gas supervisor, to pay a sum determined by the supervisor as adequate to compensate the lessor for failure to drill and produce any such well. In the event that this lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of this lease.

§ 3387.3–3 Inspection.

The lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of the Department of the Interior, the leased area and all wells, improvements, machinery and fixtures thereon and all books, accounts, maps and records relative to operations and surveys or investigations on or with regard to the leased area or under the lease.

§ 3387.3–4 Diligence; compliance with regulations and orders.

The lessee shall exercise reasonable diligence in drilling and producing the wells herein provided for; shall carry on all operations in accordance with approved methods and practices including those provided in the operating and conservation regulations for the outer Continental Shelf; shall remove all structures when no longer required for operations under the lease to sufficient depth beneath the surface of the waters to prevent them from being a hazard to navigation and the fishing industry; and shall carry out at expense of the lessee all lawful and reasonable orders of the lessor relative to the matters in this section. On failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost: *Provided,* That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

§ 3387.3–5 Freedom of purchase.

The lessee shall accord all workmen and employees directly engaged in any of the operations under the lease complete freedom of purchase.

§ 3387.3–6 Removal of property on termination of lease.

Upon the expiration of any lease, or the earlier termination thereof as provided in the regulations in this part, the lessee shall within a period of one year thereafter remove from the premises all structures, machinery, equipment, tools, and materials other than improvements needed for producing wells or for drilling or producing other leases, and other property permitted by the lessor to be maintained.

§ 3387.4 Exploration and operations.

§ 3387.4–1 Purchase of production.

In time of war, or when the President of the United States shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in section 12(b) of the act.

§ 3387.4–2 Suspension of operations during war or national emergency.

Upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953, the Secretary is authorized to suspend any or all operations under a lease, as provided in section 12(c) of the act: *Provided,* That just compensation shall be paid by the United States to the lessee whose operations are thus suspended.

§ 3387.4–3 Restriction of exploration and operations.

The United States shall have the right, as provided in section 12(d) of the act, to restrict from exploration and operations the leased area or any part thereof which may be designated by and through the Secretary of Defense, with the approval of the President of the United States, as, or as part of, an area of the outer Continental Shelf needed for national defense. So long as such designation remains in effect no exploration or operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under any lease within any such restricted area shall be suspended, any payments of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

§ 3387.4–4 Geological and geophysical exploration; rights-of-way.

The United States reserves the right to authorize the conduct of geological and geophysical exploration in the leased area which does not interfere with or endanger actual operations under the lease and the right to grant such easements or rights-of-way, upon, through, or in the leased area as may be necessary or appropriate to the working of other lands containing the deposits described in the act, and to the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes, subject to the provisions of section 5(c) of the act where they are applicable and to all lawful and reasonable regulations and conditions prescribed by the Secretary thereunder.

§ 3387.4–5 Leases of sulphur and other mineral.

The United States reserves the right to grant sulphur leases and leases of any mineral other than oil, gas, and sulphur within the leased area or any part thereof, subject to the provisions of sections 8(c), 8(d), and 8(e) of the act and all lawful and reasonable regulations prescribed by the Secretary thereunder: *Provided,* That no such sulphur lease or lease of other mineral shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the lease which is continued under section 6 of the act.

§ 3387.5 Remedies in case of default.

(a) Whenever the lessee fails to comply with any of the provisions of the act or of the lease or of the lawful and reasonable regulations issued within 90 days after the authorized officer has determined that the lease meets the requirements of section 6(a) of the act, the lease shall be subject to cancellation as follows:

(1) If, at the time of such default, no well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or adjoining lands the lease may be cancelled by the Secretary (subject to the right of judicial review as provided in section 8(j) of the act) if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(2) If, at the time of such default, any well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or

adjoining lands, the lease may be cancelled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4(b) of the act if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(b) If any such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address, the lessor may then exercise any legal or equitable remedy which the lessor may have; however, the remedy of cancellation of the lease may be exercised only under the conditions and subject to the limitations set out in paragraph (a) of this section, or pursuant to section 8(i) of the act.

(c) A waiver of any particular default shall not prevent the cancellation of the lease or the exercise of any other remedy the lessor may have by reason of any other cause or for the same cause occurring at any other time.

§ 3387.6 Heirs and successors in interest.

Each obligation under any lease and under the regulations in this part shall extend to and be binding upon, and every benefit thereunder shall inure to, the heirs, executors, administrators, successors, or assigns of the lessee.

This Circular replaces and supersedes all of Circulars 2033, 2031, 1946, 1928, 1878, 1874, and the portion of Circular 1963 relating to 43 CFR, Part 201.

GPO 847-658

Regulations pertaining to

COAL LEASES, PERMITS, and LICENSES on the PUBLIC LANDS

3131.1 (b) (c) + (d) cancelled by Circ. 2178

CIRCULAR NO. 2154

Replaced by Circ 2321

Regulations pertaining to

COAL LEASES, PERMITS, and LICENSES on the PUBLIC LANDS

As contained in Title 43 of the Code of Federal Regulations

August 1, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular 2154]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

Group 3000—Minerals Management; General

PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

Sec.

3001.0–5 Definitions
3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Reprint of regulations current as of August 3, 1964

Circular Distribution List

PART 3130—COAL LEASES, PERMITS AND LICENSES

Subpart 3130—Coal Leases, Permits and Licenses; General

Sec.

3130.0–3 Statutory authority.
3130.1 Requirements when lands are within a withdrawal.

Subpart 3131—General Provisions

3131.1 Acreage limitations.
3131.2 Qualifications of applicants.
3131.3 Equitable rights; holders of leases or permits affecting certain lands or coal deposits in Oklahoma.
3131.4 Permits, leases and licenses for lands disposed of with reservation of coal.

Subpart 3132—Leases

3132.1 Requirements.
3132.1–1 Leasing units.
3132.1–2 Leasing of additional coal deposits.
3132.2 Application for lease.
3132.3 Issuance of leases.
3132.3–1 Compliance bond.
3132.3–2 Form of lease.
3132.3–3 Minimum production.
3132.4 Competitive leasing.
3132.4–1 Offer for lease by competitive bidding.
3132.4–2 Notice of lease offer.
3132.4–3 Sale; bidding requirements, action by successful bidder.
3132.5 Readjustment of terms at end of twenty-year periods.
3132.6 Relinquishment of lease.
3132.7 Cancellation of lease.

Subpart 3133—Permits

3133.1 Character of lands.
3133.2 Rights conferred.
3133.3 Application for permits; permit rental.
3133.4 Permit bond.
3133.5 Extension, relinquishment, cancellation, or termination of permit.
3133.6 Reward for discovery.

Subpart 3134—Transfers

3134.1 Transfers, including subleases.
3134.2 Limitation on overriding royalties.

Subpart 3135—Limited Coal Licenses

3135.0–1 Purpose of license.
3135.1 Area and duration.
3135.2 Application for license.
3135.3 Licenses to relief agencies.

AUTHORITY: The provisions of this Part 3130 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3130—Coal Leases, Permits and Licenses; General

§ 3130.0–3 Statutory authority.

Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U.S.C. 201, 202–208), as amended, authorize the Secretary of the Interior to:

(a) Divide into leasing units and award leases of coal lands and coal deposits owned by the United States.

(b) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits; and

(c) Issue limited licenses or permits to prospect for, mine and take for use coal from public lands.

§ 3130.1 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for coal lease, permit or license is within a withdrawal which does not preclude disposition of the coal deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a coal lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

Subpart 3131—General Provisions

§ 3131.1 Acreage limitations.

(a) Except where the rule of approximation applies, a permit or lease may not exceed 2,560 acres. The rule of approximation applies to applications for leases or prospecting permits only where elimination of the smallest legal subdivision involved would result in a deficiency of area under 2,560 acres greater than the excess over 2,560 acres resulting from the inclusion of such subdivision. A permit shall include contiguous tracts, or tracts in reasonably compact form. A lease shall include contiguous tracts, except in cases where noncontiguous tracts can be efficiently worked as a single mine or unit. Except as hereinafter stated, no person, association, or corporation may hold at one time coal leases or permits exceeding 10,240 acres in any one state, whether directly through the ownership of such

leases and permits, or interests therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interests therein, and applications therefor. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation, unless he is the beneficial owner of more than ten percent of the stock or other instruments of ownership or control of such association or corporation.

§ 3131.2 Qualifications of applicants.

(a) Leases and prospecting permits may be issued to citizens of the United States, associations of citizens and corporations organized under the laws of the United States or any State thereof, including a company or corporation operating a common-carrier railroad, and to municipalities. Limited licenses or permits for the mining of coal may be issued to citizens, associations of citizens and municipalities.

(b) Every applicant for coal permit or lease, other than a company or corporation operating a common-carrier railroad, must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate 10,240 acres in any one State.

(c) Every company or corporation operating a common-carrier railroad must make a statement that it needs the coal for which it seeks a permit or lease for its own use for railroad purposes; that it operates main or branch lines in the State in which the lands involved are located; that the aggregate acreage in the permits, leases and applications therefor in which it is interested directly or indirectly does not exceed 10,240 acres; and that it does not hold more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

(d) Every applicant for lease or permit must also furnish a showing as to the need for additional coal production which cannot otherwise be reasonably met, or, if such a showing of need cannot be made, a statement of the reasons why a lease or permit is desired.

§ 3131.3 Equitable rights; holders of leases or permits affecting certain lands or coal deposits in Oklahoma.

(a) Equitable rights of persons who, prior to February 25, 1920, occupied and improved or claimed coal lands in good faith may be recognized in awarding leases of such lands. In the case of an award of a lease to such a person the rents and royalties will be established at rates not less than the minimum provided for leases under the act.

(b) A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, covering certain coal lands or coal deposits in Oklahoma which the Choctaw and Chickasaw Nations agreed to convey to the United States in a contract ratified by the act of June 24, 1948 (62 Stat. 596), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to the expiration date of the current lease.

§ 3131.4 Permits, leases and licenses for lands disposed of with reservation of coal.

Where lands included in a permit, lease or license have been or may be disposed of with reservation of the coal deposits, a permittee, lessee or licensee must make full compliance with the law under which such reservation was made. See the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81); June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 377), and other laws authorizing such reservation.

Subpart 3132—Leases

§ 3132.1 Requirements.

§ 3132.1–1 Leasing units.

(a) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(b) All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

(c) Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

§ 3132.1–2 Leasing of additional coal deposits.

(a) Under section 3 of the act (30 U.S.C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 2,560 acres, except where the rule of approximation applies. The lessee shall file his application for modification in duplicate in the proper land office describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification. Upon determination by the authorized officer that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them they may be offered as provided in § 3132.4–2.

(b) Under section 4 of the act (30 U.S.C. 204), upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within three years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper land office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit they will be offered for leasing as provided in § 3132.4–2. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease which must not exceed 2,560 acres; otherwise, a separate lease may be issued.

(c) Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file the consent of surety and the acceptance by the lessee of the applicable regulations.

(d) A filing fee of $10, which will be retained as a service charge in any event, must accompany an application for modification of a lease under paragraph (a) or (b) of this section.

§ 3132.2 Application for lease.

(a) No specific form is required, but the application should cover the following points:

(1) The applicant's name and address.

(2) Proof of citizenship: If applicant is an individual, a statement as to whether native born or naturalized; if an association (including a partnership), it must submit a certified copy of the articles of association and a statement by its members as to their citizenship and holdings. If the applicant is a corporation, it must submit statements showing (i) the State in which it is incorporated; (ii) that it is authorized to hold leases and permits for coal deposits, and the names of the officers authorized to act in such matters in behalf of the corporation; (iii) the percentage of the corporate voting stock and of all the stock owned by aliens or those having addresses outside of the United States;

and (iv) the name, address, citizenship and acreage holdings of any stockholder owning or controlling 20 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each. A municipality must submit evidence of: (a) The manner in which it was organized; (b) that it is authorized to hold a permit or lease; and (c) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(3) A statement of the interests, direct or indirect, in other coal leases, permits or applications therefor on public lands in the State in which the lease is desired, identifying same by land office and serial number, and that such interests, when added to the acreage covered by the application, do not exceed in the aggregate 10,240 acres in the State. A railroad company or corporation operating a common carrier must state that its interests, together with the acreage covered by the application, do not exceed in the aggregate 10,240 acres.

(4) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the United States Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(5) The showing specified in § 3131.2 (d).

(6) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(7) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(b) All applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations. Where such power of attorney has been filed in the same land office where the application is filed reference thereto by serial number of the record in which it has been filed may be made upon the filing of subsequent applications. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(c) A filing fee of $10, which will be retained as a service charge in any event, must accompany each application.

§ 3132.3 Issuance of leases.

§ 3132.3–1 Compliance bond.

A compliance bond, in no event less than $1,000, will be required prior to the issuance of a lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a

corporate, personal or individual security bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 3132.3–2 Form of lease.

Leases shall be issued on a form approved by the Director.

§ 3132.3–3 Minimum production.

Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act (see § 3102.4). Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

§ 3132.4 Competitive leasing.

§ 3132.4–1 Offer for lease by competitive bidding.

If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided in the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

§ 3132.4–2 Notice of lease offer.

Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will show the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publiaction of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; and (b) that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding is unlawful. See 18 U.S.C. 1860.

§ 3132.4–3 Sale; bidding requirements, action by successful bidder.

(a) When the sale is by public auction, before bidding is commenced by those persons present, the Manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the Manager or other officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in § 3132.2.

(b) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. If the land is

surveyed, four lease forms will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3132.4–2, and file a bond as required by § 3132.1. The lease will be dated as of the first day of the month following its issuance unless the succesful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with the requirements of this subsection until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act. If the lease awarded to the successful bidder, is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence, such as specified in § 3131.6(b) in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

§ 3132.5 Readjustment of terms at end of twenty-year periods.

The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period.

§ 3132.6 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3132.7 Cancellation of lease.

(a) If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3132.5 or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) A lease or permit issued pursuant to § 3131.1(d) may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee or permittee to carry on business economically or if the lessee or permittee has divested himself of all or any part of the original 10,240 acres or no longer has facilities for the exploitation of the deposits under lease or permit. However, such lessee or permittee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease or permit should not be canceled.

Subpart 3133—Permits

§ 3133.1 Character of lands.

Permits shall be issued on a form approved by the Director for a period of two years to qualified applicants to prospect unclaimed, undeveloped lands where

prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 3133.2 Rights conferred.

A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

§ 3133.3 Application for permit; permit rental.

An application for a permit must be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing fee of $10 which is not returnable, and by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof but no less than $20, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision. No specific form of application is required. In addition to the requirements of § 3132.2(a) (1) to (5) and (b), the application for a permit should be accompanied by a proposed plan and method for conducting prospecting or exploratory operations on the land setting forth the estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

§ 3133.4 Permit bond.

(a) The applicant must furnish a corporate surety bond or a personal bond on a form approved by the Director conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of $500 except where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85) or the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 377), in which event, a bond on the same form in the sum of $1,000 will be required.

(b) The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant that the permit will be granted when the bond is filed.

§ 3133.5 Extension, relinquishment, cancellation, or termination of permit.

(a) Coal permits may be extended by an authorized officer of the Bureau of Land Management for a period of two years if he finds, after consultation with the Mining Supervisor of the Geological Survey, that the permittee has been unable, with reasonable diligence, to determine the existence or workability of coal deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension. An application for extension must be filed in duplicate within 90 days prior to expiration of the permit and must be accompanied by the third year's rental and a $10 filing fee, which is not returnable. The application must disclose the reasons additional time is considered necessary to complete prospecting work. Extension will be limited to such period, not to exceed the two years, as may be determined to be allowable under the circumstances in each particular case. If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for coal permits.

(b) The permittee may relinquish the entire permit acreage or any portion thereof. A partial relinquishment must specifically describe the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the proper land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(c) Except as provided for in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any

of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment in not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of any other coal permit applications. Applications for such permits filed prior to such notation will be rejected.

(d) Where lands embraced in a cancelled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3133.6 Reward for discovery.

(a) A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in a reasonably compact form. An application for preference right lease must be filed in duplicate promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be twenty-five cents for each acre or fraction thereof. The lease, if issued, will be in accordance with the provisions of § 3132 and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

(b) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittees and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3132.2.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittees and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3132.2, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3132.2.

Subpart 3134—Transfers

§ 3134.1 Transfers, including subleases.

(a) Permits and leases may be transferred, in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 3132.2. If the instrument fails to describe the true consideration, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in triplicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

(b) The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

(c) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(d) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(e) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3133.6(b).

§ 3134.2 Limitation on overriding royalties.

An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above

limitation if he shows to the satisfaction of the Bureau of Land Management, that he had made substantial investments for improvements on the land covered by the assignment.

Subpart 3135—Limited Coal Licenses

§ 3135.0–1 Purpose of license.

Coal licenses may be issued for a period of two years to individuals and associations of individuals to mine and take coal for their own local domestic need for fuel, but in no case for barter or sale, without the payment of any rent or royalty. Licenses may be issued to municipalities to mine and dispose of coal without profit to their residents for household use. Under such a license a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

§ 3135.1 Area and duration.

(a) A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less and may be revoked at any time. Such license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period.

(b) Licenses to municipalities are limited as to area by the act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 acres for a municipality of not less than 100,000, and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of 4 years from date of issuance, unless renewed; but every such licensee must make to the Bureau of Land Management, an annual report of all operations conducted under such license.

(c) An application for renewal of a license must be accompanied by a filing fee of $10, which will be retained as a service charge even though the application is later withdrawn or rejected.

§ 3135.2 Application for license.

Application for a limited license to mine coal for domestic needs must be filed, in quadruplicate, on a form approved by the Director or its substantial equivalent in the appropriate land office and be accompanied by a $10 filing fee. A municipality must file with the application a showing of (a) the law or charter and procedure taken by which it became and exists a legal body corporate, (b) that the taking of a license is authorized under such law or charter and (c) that the proposed action has been duly authorized by the governing body of the municipality.

§ 3135.3 Licenses to relief agencies.

(a) The Bureau of Land Management, may grant authority to a recognized established relief agency of any State, upon its request, to take government-owned coal deposits within the State in localities where needed to supply families on the rolls of such agency who require coal for fuel for their homes and who are unable to pay for same.

(b) Tracts shall be selected at points convenient to supply the families in the locality thereof, and each family shall be restricted to the amount of coal actually needed for its use, which in no case shall exceed 20 tons annually.

(c) Coal may be taken from such tracts only by those given written authority by the relief agency, and all mining shall be done pursuant to permission and all Federal and State laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

(d) The local relief agency may take coal from available land prior to issuance of license but not earlier than 5 days after it has filed in the land office of the district wherein the land is situated an application for license. No filing fee will be required. In the absence of objections and if the application is otherwise regular, a license will be granted. Pending action on the application for license, the relief agency may continue to take the coal.

This Circular supersedes Circulars 2041 and 2096.

GPO 843-987

CIRCULAR NO. 2155

Regulations pertaining to

Replaced by Circ 2321

POTASSIUM PERMITS and LEASES on the PUBLIC LANDS

As contained in Title 43 of the Code of Federal Regulations

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

August 1, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular 2155]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

Group 3000—Minerals Management; General

PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

Sec.

3001.0–5 Definitions
3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Reprint of regulations current as of August 3, 1964

Circular Distribution List

PART 3140—POTASSIUM PERMITS AND LEASES

Subpart 3140—Potassium Permits and Leases; General

Sec.
3140.0–3 Statutory authority.
3140.0–6 Completion of pending applications and prior claims.

Subpart 3141—Area Limitations

3141.1 Area and limitation on holdings.
3141.2 Qualifications of applicant.
3141.3 Permits and leases for lands disposed of with reservation of potassium.
3141.4 Requirements when lands are within a withdrawal.

Subpart 3142—Prospecting Permits

3142.1 Application for permit; permit rental.
3142.2 Rights conferred.
3142.3 Permit bond.
3142.4 Extension of permits.
3142.5 Relinquishment, cancellation, or termination of permit.
3142.6 Reward for discovery.

Subpart 3143—Leases

3143.1 Application for lease.
3143.2 Provisions of potassium leases.
3143.2–1 Form of lease.
3143.2–2 Lease bond.
3143.2–3 Minimum production.
3143.3 Competitive leases.
3143.3–1 Notice of lease offer.
3143.3–2 Bid deposits.
3143.3–3 Award of lease.
3143.4 Readjustment of terms and conditions at end of twenty-year periods.
3143.5 Relinquishment of lease.
3143.6 Cancellation of lease.

Subpart 3144—Transfers

3144.1 Transfers, including subleases.

Subpart 3145—Royalties

3145.1 Overriding royalties.

AUTHORITY: The provisions of this Part 3140 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189, Interpret or apply secs. 1–7, 44 Stat. 1057, 1058, as amended sec. 7, 47 Stat. 151; 30 U.S.C. 281–287.

Subpart 3140—Potassium Permits and Leases; General

§ 3140.0–3 Statutory authority.

(a) Sections 1 to 7 of the act of February 7, 1927, as amended (44 Stat. 1057, 30 U.S.C. secs. 281–287), authorize the Secretary of the Interior to:

(1) Issue permits to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium in public lands or in public lands disposed of with a reservation of such deposits to the United States.

(2) Lease such lands containing valuable deposits of such substances.

(b) As authorized in section 4 of the act, potassium leases may also provide for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described in said section, associated with the potassium deposits.

§ 3140.0–6 Completion of pending applications and prior claims.

(a) Section 6 of the act of February 7, 1927, supra, which repealed the act of October 2, 1917 (40 Stat. 297), excepts valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

(b) As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

Subpart 3141—Area Limitation

§ 3141.1 Area and limitation on holdings.

(a) A lease or permit may not exceed 2,560 acres, except where the rule of approximation applies. The lands in the lease or permit shall be in reasonably compact form entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width. No person, association, or corporation may hold at one time in any one state potassium permits exceeding 51,200 acres, and except as hereinafter provided, potassium leases exceeding 25,600 acres in one or more mining units, whether directly through the ownership of such permits or leases or interests therein and applications, therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such permits or leases, or interests therein and applications therefor. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage.

Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten percent of the stock or other instruments of ownership or control of such association or corporation.

(b) Any person, association, or corporation holding acreage approximating 25,600 acres of Federal land, upon a showing that the leased deposits extend into adjoining or adjacent Federal lands and that the lands containing such reserves are a necessary and normal part of a mining unit may file an application with the Manager to have such adjoining or adjacent Federal land (including lands under lease, permit lands subject to lease, or unleased lands) designated a fringe-acreage that will not be chargeable under paragraph (a) of this section to leasehold acreage holdings of the applicant. Such an application must be accompanied by a filing fee of $10 which is not returnable. If the Manager shall determine, after consultation with the Mining Supervisor, that the application meets the above requirements and that such designation will result in conservation of natural resources and will provide for economical and efficient recovery as a part of the mining unit, he may designate specific tracts by legal subdivisions not to exceed 2,560 acres in all as nonchargeable to the applicant under paragraph (a) of this section. The intent of this provision is that fringe area deposits not to exceed 2,560 acres may be held without acreage charge upon acquisition of mining rights therein by the applicant. A designation of fringe-acreage under this section shall not constitute a determination that the deposits therein shall be mined only by the applicant.

§ 3141.2 Qualifications of applicant.

(a) Permits and leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorrated.

(ii) That it is authorized to hold leases for potassium deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock and of all the stock owned by aliens for those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 3141.1.

§ 3141.3 Permits and leases for lands disposed of with reservation of potassium.

Where lands included in a permit or lease have been disposed of with reservation of potassium deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54), and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

NOTE: As provided in paragraph 3 of notice of October 16, 1951, 16 F.R. 10669, potash permits and leases including renewals for "Potash Area lands" within Eddy and Lea Counties, New Mexico, shall contain special requirements for the protection of oil and gas deposits.

§ 3141.4 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for potassium permit or lease is within a withdrawal which does not preclude disposition of the potassium deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a potassium permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

Subpart 3142—Prospecting Permits

§ 3142.1 Application for permit; permit rental.

(a) An application for a permit must be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing of $10 which is not returnable, and by full payment of the first year's rental in the amount specified in paragraph (b) of this section, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision. No specific form of application is required, but the application should include the information and evidence set forth in §§ 3141.2 and 3143.1(a) (1) and (2).

(b) A permittee must pay an annual rental of 25 cents an acre or fraction thereof covered by his permit, but not less than $20 per year.

§ 3142.2 Rights conferred.

Two-year permits issued on a form approved by the Director grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of, or workability of, the potassium deposits. Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of such deposits in commerical quantities.

§ 3142.3 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond of not less than $1,000.

§ 3142.4 Extension of permits.

Potassium permits may be extended for a single period of two years if the permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit during the two-year period for which the permit was issued. This requirement may be waived, in the discretion of the Secretary, upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting. The showing should consist of copies of timely correspondence or other evidence demonstrating the unsuccessful efforts to obtain the material or labor. The application for extension must be filed in duplicate in the appropriate land office within the period beginning 90 days prior to the date of expiration of the permit. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee, and the lands will be subject to new applications for potassium permits. The application for extension must be accompanied by a filing fee of $10, which will be retained as a service charge even though the application is later withdrawn or rejected.

§ 3142.5 Relinquishment, cancellation or termination of permit.

(a) A permittee may relinquish the entire permit acreage or any portion thereof. A partial relinquishment must describe the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance, it will be effective as of the date of its filing, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(b) Except as provided in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government then the

permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay rental must be noted on the official records of the appropriate land office. Until such notation is made, the lands covered by the permit shall not be available for further filing of applications for potassium permit. Applications for such permits filed prior to such notation will be rejected.

(c) Where lands embraced in a canceled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3142.6 Reward for discovery.

(a) A permittee who discovers valuable potassium deposits in the land before the permit expires is entitled to a preference right lease of all or part of the lands in the permit, in a reasonably compact form as provided in § 3141.1. An application for a preference right lease must be filed in the appropriate land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as described by the prospecting work, and show that valuable potassium deposits were discovered before the permit expired. The application must be accompanied by the first year's lease rental at the rate of 25 cents per acre or fraction thereof. The lease will be on a form approved by the Director and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Director the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) When probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3141.2.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the

deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3141.2b (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3141.2(b).

Subpart 3143—Leases

§ 3143.1 Application for lease.

(a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. If the lands have not been so surveyed, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(3) Evidence that the land is valuable for its potassium content, with a statement as to the character, extent and mode of occurrence of the potassium deposits.

(b) The application must be signed by applicant, or by his attorney-in-fact supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

(d) Lands determined to be available for leasing may be offered competitively in the manner specified in § 3143.3–1 except that if the Manager, after consulting with the Mining Supervisor, determines that the potassium deposits in the lands applied for extend into an active mining unit held by the applicant, are a normal part of such mining unit, are lacking in sufficient reserves to warrant independent development as a single mining unit, and are not of competitive interest to holders of other active mining units in the area, he may, in the interest of conservation of natural resources, grant to such applicant a lease to mine and remove such adjoining deposits without competitive bidding. A noncompetitive lease granted under this subsection shall provide for a royalty on production equal to the highest rate of royalty in any Federal lease in the applicant's adjoining mining unit but not less than 5 percent of the gross value thereof at the point of shipment to market, and at the option of the applicant to be exercised at the time of filing of his application, either a cash bonus of $15.00 per acre or fraction thereof or a production payment of one cent per mine run ton in addition to the royalty specified in the lease. Acreage bonuses must be paid at the time of filing of application. Production payments will be prescribed on the lease form.

(e) Potash lands and deposits in or adjacent to Searles Lake, California, are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under Part 195 of this chapter.

§ 3143.2 Provisions of potassium leases.

§ 3143.2–1 Form of lease.

Leases shall be issued on a form approved by the Director.

§ 3143.2–2 Lease bond.

A compliance bond, in no event less than $5,000, will be required prior to the issuance of a lease. Personal bonds must be secured by negotiable Federal securities in the amount of the bond.

§ 3143.2–3 Minimum production.

Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

§ 3143.3 Competitive leases.

§ 3143.3–1 Notice of lease offer.

Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding is unlawful. See 18 U.S.C. 1860.

§ 3143.3–2 Bid deposits.

The successful bidder at a sale by public auction must on the date of sale deposit with the Manager of the Land Office, or other officer conducting the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to that prescribed in § 3141.2.

§ 3143.3–3 Award of lease.

Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3143.3–1 and file a bond as required by § 3143.2–2. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 3142.6 must be filed before it can be determined to whom the lease may be issued.

§ 3143.4 Readjustment of terms and conditions at end of twenty-year periods.

The terms and conditions of a lease are subject to reasonable readjustment at the end of each twenty-year period succeeding the date of the lease, unless otherwise provided by law at the time of

the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or that no readjustment is to be made. The effective date of readjustment shall be the end of the respective twenty-year period or the first of the month following receipt by the lessee of notice of readjustment, whichever is the later. Unless the lessee files objection to the proposed terms, or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms.

§ 3143.5 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3143.6 Cancellation of lease.

If the lessee fails to comply with the general regulations in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3143.4, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act (30 U.S.C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

Subpart 3144—Transfers

§ 3144.1 Transfers, including subleases.

(a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery made before or after the partial assignment, either on the retained or the assigned portions will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the readjustment periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3141.2 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of

the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3142.6 (c).

Subpart 3145—Royalties

§ 3145.1 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the ecenomic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or in the absence of such argeement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

This Circular supersedes Circulars 2050 and 2096.

GPO 843-989

CIRCULAR NO. 2156

Replaced by Circ 2321

Regulations pertaining to

SODIUM LEASES, PERMITS, and USE PERMITS on the PUBLIC LANDS

As contained in Title 43 of the Code of Federal Regulations

August 1, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular 2156]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

Group 3000—Minerals Management; General

PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

Sec.

3001.0–5 Definitions
3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Reprint of regulations current as of August 3, 1964

Circular Distribution List

PART 3150—SODIUM LEASES

Subpart 3150—Sodium Permits and Leases and Use Permits; General

Sec.
3150.0–3 Authority.
3150.0–6 Protection of pre-existing mining claims.

Subpart 3151—General Provisions

3151.1 Area and limitation on holdings.
3151.2 Qualifications of applicant.
3151.3 Permits and leases for lands disposed of with reservation of sodium.
3151.4 Requirements when lands are within a withdrawal.

Subpart 3152—Prospecting Permits

3152.1 Application for permit, and issuance of permit.
3152.2 Term of prospecting permit; rights conferred.
3152.3 Permit bond.
3152.4 Relinquishment, cancellation, termination of prospecting permit; availability of lands for further application upon relinquishment, cancellation or termination of permit.
3152.5 Reward for discovery.
3152.6 Expiration of permit.

Subpart 3153—Sodium Leases

3153.1 Application for lease by competitive bidding.
3153.2 Lease requirements.
3153.2–1 Form of lease.
3153.2–2 Lease bond.
3153.3 Competitive leasing.
3153.3–1 Minimum production.
3153.3–2 Notice of lease offer.
3153.3–3 Bid deposits.
3153.3–4 Award of lease.
3153.4 Renewal leases.
3153.5 Relinquishment of lease.
3153.6 Cancellation of lease.

Subpart 3154—Transfers

3154.1 Transfers, including subleases.
3154.2 Overriding royalties.

Subpart 3155—Use Permits

3155.1 Use permits for additional land.

AUTHORITY: The provisions of this Part 3150 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189. Interpret or apply secs. 23–25, 41 Stat. 447, as amended; 30 U.S.C. 261–263.

Subpart 3150—Sodium Permits and Leases and Use Permits; General

§ 3150.0–3 Authority.

Sections 23 through 25 of the Act of February 25, 1920 (41 Stat. 447; 30 U.S.C. sec. 261–3) hereinafter called the Mineral Leasing Act, authorize the Secretary of the Interior to:

(a) Issue permits to prospect for deposits of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in public lands or in public lands disposed of with a reservation of such deposits to the United States;

(b) Lease such lands containing valuable deposits of such substances, and

(c) Grant to a permittee or lessee of such lands the right to use unoccupied nonmineral public land not exceeding forty acres in area camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

§ 3150.0–4 Protection of pre-existing mining claims.

Mining claims for deposits described in § 3150.0–3 which were valid on February 25, 1920, or on lands in San Bernardino County, California, on December 11, 1928, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the Mineral Leasing Act.

Subpart 3151—General Provisions

§ 3151.1 Area and limitation on holdings.

(a) Except where the rule of approximation applies, a lease or permit may not include more than 2,560 acres in reasonably compact form entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width. No person, association or corporation may hold at any one time more than 5,120 acres in any one State, except as hereinafter stated, whether directly through ownership of leases, permits and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding leases, permits and applications therefor. A larger area may be granted under the "rule of approximation" in those States covered by the public land rectangular survey system. That rule applies to applications for prospecting permits only where elimination of the smallest legal subdivision involved would result in a deficiency of area under 2,560 acres greater than the excess over 2,560 acres

resulting from inclusion of each subdivision.

(b) Where necessary in order to secure the economic mining of sodium compounds, the authorized officer may, in his discretion and after consultation with the Mining Supervisor, permit a person, association, or corporation to hold up to 15,360 acres in any one State, upon submittal of but not necessarily limited to the following information and evidence as proof that the additional acreage is necessary for such purpose:

(1) Whether such person, association, or corporation holds sodium leases and permits covering fee, railroad and State lands within the same area of its public land holdings under sodium leases and permits, and if so, the description of those lands and the amount of acreage involved.

(2) The reasons why the additional public lands covering acreage in excess of 5,120 acres are actually necessary to secure an economic mining unit.

(3) A log of all wells drilled for sodium deposits on the lands which such person, association, or corporation holds under sodium lease or permit, together with an analysis of the ore discovered therein.

(c) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holding of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation.

§ 3151.2 Qualifications of applicant.

(a) Permits and leases may be issued to citizens of the United States, associations of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file in the appropriate land office statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statestatement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases or permits for sodium deposits, and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock and of all the stock owned by aliens for those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 3151.1.

§ 3151.3 Permits and leases for lands disposed of with reservation of sodium.

Where lands included in a permit or lease have been disposed of with reservation of sodium deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54) and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

§ 3151.4 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for sodium permit or lease is within a withdrawal which does not preclude disposition of the sodium deposits, the head of the Government agency having control will be called upon for a report as to whether there is any

objection to the granting of a sodium permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

Subpart 3152—Prospecting Permits

§ 3152.1 Application for permit, and issuance of permit.

(a) To obtain a sodium prospecting permit, an application must be filed in quintuplicate in the appropriate land office on a form approved by the Director or on an exact reproduction thereof. The form or an exact reproduction will constitute the permit when signed by the authorized officer of the land office. The application must be filed in accordance with the regulation in effect at the date of filing.

(b) Each application should be filled in on a typewriter or printed plainly in ink and signed in ink by the applicant or the applicant's duly authorized attorney in fact. An application may be made by a legal guardian or trustee in his name for the benefit of a nonalien minor or minors but an application may not be filed by a minor. Each application must contain a description of the land as prescribed in § 3153.1. Except where the rule of approximation applies, all applications must be for an area of not more than 2,560 acres of land in reasonably compact form as specified in § 3151.1.

(c) Each application, when filed, must be accompanied by:

(1) A filing fee of $10 which is not returnable, and full payment of the first year's rental in the amount specified in paragraph (h) of this section.

(2) If the applicant is an association or corporation, the evidence specified in § 3151.2. If the acreage holdings of a corporation or members of an association exceed 5,120 acres in the State in which the lands applied for are situated, the information and evidence specified in § 3151.1.

(3) (i) Except in a case where an officer of a corporation signs an application on behalf of the corporation, as to which see § 3151.2(b) evidence of the authority of the attorney in fact to sign the application and permit, if the application is signed by such attorney on behalf of the applicant.

(ii) If such applicant is an individual, a statement over the applicant's signature setting forth the applicant's citizenship and acreage holdings, direct and indirect, in sodium leases, permits and applications therefor in the State in which the lands applied for are situated. If such holdings exceed 5,120 acres, the same information and evidence required of a corporation or members of an association.

(4) If the application is made by a guardian or trustee, the evidence specified in § 3152.5.

(d) (1) Except as provided in subparagraph (3) of this paragraph, an application will be rejected if:

(i) The land description does not conform with the requirements of § 3153.1 (a) (2), or the land is not in reasonably compact form as specified in § 3151.1.

(ii) The total acreage exceeds 2,560 acres, except where the rule of approximation applies.

(iii) The full amount of the filing fee and the first year's rental do not accompany the application, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(iv) The application is signed by an attorney in fact on behalf of the applicant and is not accompanied by the evidence and statement required by paragraph (c) (3) of this section.

(v) The application is signed by a guardian or trustee on behalf of a minor and is not accompanied by the evidence specified in § 3152.5.

(vi) Less than five copies of the application are filed.

(vii) There is noncompliance with the requirements specified in § 3151.2.

(2) If an application is defective to the extent set out in paragraph (d) (1) of this section, the applicant will be given an opportunity to file a new application within thirty days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the thirty-day period another application is filed.

(3) An application for permit on a form not correctly reproduced, but which

contains the statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the date of filing, will be approved by the authorized officer provided all other requirements are met.

(e) The United States will indicate its acceptance of the application, in whole or in part, and the issuance of the permit by the signature of the authorized officer in the space provided therefor. An executed copy of the permit will be mailed to the applicant at the address of record.

(f) If the applicant dies before the permit is issued, evidence such as specified in § 3152.5 must be filed before it can be determined to whom the permit may be issued.

(g) (1) An applicant whose application is pending on the effective date of this section, as amended, may file a new application on a form approved by the Director for the land described in his application, pursuant to paragraphs (a), (b) and (c) of this section, but without payment of the required filing fee, if it has already been paid.

(2) When required, the holder of an application pending on the effective date of this section, as amended, must within 30 days from receipt of notice, file an application on a form approved by the Director covering the same land in, and bearing the same serial number as his pending application. He must also pay the first year's rental in the amount specified in paragraph (h) of this section. No additional filing fee will be required. Failure to refile will result in the rejection of the original application without further notice.

(h) A permittee must pay an annual rental of 25 cents an acre or fraction thereof covered by his permit, but not less than $20 per year, such annual payments of rental shall be made on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper land office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. Payment of rental will also be required on all permits issued pursuant to applications filed prior to the effective date of this section, as amended.

§ 3152.2 Term of prospecting permit; rights conferred.

Prospecting permits are issued for a period of two years and grant the permittee the exclusive right to prospect and explore the lands involved to determine the existence of, or workability of, the sodium deposits therein. Only such material may be removed from the lands as is necessary to experimental work or the demonstration of the existence of such deposits in commercial quantities. The permit will be dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

§ 3152.3 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond of not less than $1,000. A bond will also be required on all permits issued pursuant to applications filed prior to the effective date of this section, as amended.

§ 3152.4 Relinquishment, cancellation, or termination of prospecting permit; availability of lands for further application upon relinquishment, cancellation, or termination of permit.

(a) A permitee may relinquish the entire permit or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must contain the description of the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(b) Except as provided for in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government then the permit may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental as specified in § 3152.1.

(2) The termination of the permit or failure to pay rental must be noted on the official records of the appropriate land office. Until such notation is made, the lands covered by the permit are not subject to any other sodium permit. Applications for such permits filed prior to such notation will be rejected.

(c) Where lands embraced in a cancelled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. If prior to such notation the permit expires at the end of its primary term in the absence of cancellation or relinquishment, the lands covered by the permit shall likewise become available for the filing of new applications even though the cancellation or relinquishment has not been noted on the records.

§ 3152.5 Reward for discovery.

(a) A permittee who discovers valuable sodium deposits in the land before the permit expires is entitled to a preference right lease of all or part of the lands in the permit, in a reasonably compact form as provided in § 3151.1 An application for a preference right lease must be filed in duplicate in the appropriate land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable sodium deposits were discovered before the permit expired. The application should be accompanied by the rental for the first year of the lease, at the rate of 25 cents per acre or fraction thereof. The lease will be on a form approved by the Director, and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Director the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivisions of such survey.

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3151.2.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3151.2, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the

minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3151.2.

§ 3152.6 Expiration of permit.

Unless a lease application is filed pursuant to § 3152.1 the permit will expire at the end of its period without notice to permittee. No extension of the term will be granted.

Subpart 3153—Sodium Leases

§ 3153.1 Application for lease by competitive bidding.

(a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the land by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either as official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the United States Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(3) Evidence that the land is valuable for its sodium content, with a statement as to the character, extent and mode of occurrence of the sodium deposits.

(b) The application must be signed by applicant, or by his attorney in fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 3153.2 Lease requirements.

§ 3153.2–1 Form of lease.

Leases shall be issued on a form approved by the Director,

§ 3153.2–2 Lease bond.

A compliance bond, in no event less than $5,000 will be required prior to the issuance of a lease.

§ 3153.3 Competitive leasing.

§ 3153.3–1 Minimum production.

Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

§ 3153.3–2 Notice of lease offer.

Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale; whether the sale will be at public auction or by sealed bids; the description of the lands; and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the

sale, including the manner in which bids may be submitted, and a statement (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The Commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U.S.C. 1860.

§ 3153.3–3 Bid deposits.

The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to that prescribed in § 3151.2.

§ 3153.3–4 Award of lease.

Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3153.3–2, and file a bond as required by § 3153.2–2. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 3152.5 must be filed before it can be determined to whom the lease may be issued.

§ 3153.4 Renewal leases.

An application for a renewal lease must be filed in duplicate in the appropriate land office not less than 30 days nor more than 90 days before the lease term expires and be accompanied by a filing fee of $10 which is not returnable. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of the lease, the lessee will be required to submit a satisfactory bond as prescribed in § 3153.2–2.

§ 3153.5 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3153.6 Cancellation of lease.

If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Act (30 U.S.C. 188). A waiver of any particular cause for forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

Subpart 3154—Transfers

§ 3154.1 Transfers, including subleases.

(a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery either on the retained or the assigned portion will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the appropriate land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease as required by § 3151.2 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease or permit or interest therein must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3152.5 (c).

§ 3154.2 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interests at any time exceeds one percent of the gross value of the output at the point of shipment to market, they shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

Subpart 3155—Use Permits

§ 3155.1 Use permits for additional land.

(a) A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of not exceeding 40 acres of unoccupied nonmineral public land not included within the boundaries of a natural forest for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of

the deposits covered by the permit or lease. The annual rental charge for use of such land will be not less than $1 an acre or fraction thereof. Payment of the rental shall be made at the time specified in § 3152.1, and will also be required on all use permits issued pursuant to applications filed prior to the effective date of this section, as amended.

(b) Applications for permits to use additional land shall be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing fee of $10 which is not returnable and the first year's rental in the amount specified in paragraph (a) of this section. The applications must contain a description of the land as specified in § 3153.1, and set forth the reasons why the additional land is necessary to the permittee or lessee for the use named, and whether it is unoccupied and nonmineral. A use permit will be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

(c) Any use permit shall terminate automatically if the permittee or lessee fails to pay the rental at the time specified in § 3152.1.

This Circular supersedes Circulars 2022, 2040, and 2066.

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CIRCULAR NO. 2157

Replaced by Circ 2321

Regulations pertaining to

PHOSPHATE LEASES, PROSPECTING PERMITS, and USE PERMITS on the PUBLIC LANDS

As contained in Title 43 of the Code of Federal Regulations

August 1, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular 2157]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

Group 3000—Minerals Management; General

PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

Sec.

3001.0–5 Definitions
3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Reprint of regulations current as of August 3, 1964

Circular Distribution List

PART 3160—PHOSPHATE LEASES; PROSPECTING PERMITS AND USE PERMITS

Subpart 3160—Phosphate Leases, Prospecting Permits, and Use Permits; General

Sec.
3160.0–3 Statutory authority.
3160.0–4 Responsibility: Protection of pre-existing mining claims.

Subpart 3161—General Provisions

3161.1 Area: limitation on holdings; term.
3161.2 Qualifications of applicant.
3161.3 Prospecting permits.
3161.3–1 Application for prospecting permit.
3161.3–2 Rights conferred.
3161.3–3 Permit rental.
3161.3–4 Permit bond.
3161.3–5 Extension of permit.
3161.3–6 Relinquishment, cancellation or termination of permit.
3161.3–7 Reward for discovery under permit.

Subpart 3162—Competitive Leases

3162.1 Application for lease by competitive bidding.
3162.2 Lease bond.
3162.3 Minimum production.
3162.4 Lessees's petition for change in minimum production.
3162.5 Offer of lands or deposits for lease by competitive bidding.
3162.6 Notice of lease offer.
3162.7 Bidding requirements; deposits.
3162.8 Action after lease offer.

Subpart 3163—Payments and Reports

3163.1 Rentals and royalties.
3163.2 Use of silica, limestone or other rock.
3163.3 Readjustment of terms and conditions at end of twenty-year periods.

Subpart 3164—Assignments

3164.1 Assignments of leases and permits or interests therein.
3164.2 Limitation on overriding royalties.

Subpart 3165—Termination

3165.1 Relinquishment of lease.
3165.2 Cancellation of lease.

Subpart 3166—Use Permits for Additional Lands

3166.1 Right to use surface.
3166.2 Applications for permits.

AUTHORITY: The provisions of this Part 3160 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3160—Phosphate Leases, Prospecting Permits, and Use Permits; General

§ 3160.0–3 Statutory authority.

Sections 9 to 12, inclusive of the Act of February 25, 1920 (41 Stat. 440; 441, 30 U.S.C. 211–214), as amended, hereinafter referred to as the act, authorizes the Secretary of the Interior to:

(a) Issue permits to prospect for phosphate deposits, including associated minerals, in public lands or in public lands disposed of with a reservation of such deposits to the United States;

(b) Lease such lands known to contain such deposits, and

(c) Grant to a permittee or lessee of such lands the right to use unappropriated and unentered public land not exceeding 80 acres for proper extraction, treatment or removal of the deposits covered by the permit or lease.

§ 3160.0–4 Responsibility; protection of pre-existing mining claims.

Mining claims for deposits described in § 3160.0–3 which were valid on February 25, 1920, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the act.

Subpart 3161—General Provisions

§ 3161.1 Area; limitation on holdings; term.

(a) A permit or lease may not exceed 2,560 acres. The lands will be in reasonably compact form and entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width.

(1) No person, association, or corporation, may hold at any one time more than 10,240 acres in the United States, whether directly through the ownership of phosphate leases, permits and applications therefor or interests in them, or indirectly through association membership or stock ownership. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or

association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holding of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation.

(2) All leases will be issued on a form approved by the Director for a primary term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease. All prospecting permits will be issued on a form approved by the Director for a primary term of two years and may be extended for such an additional period, not in excess of four years, as the Bureau of Land Management deems advisable, if it is found that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits in the permit lands and desires to prosecute further prospecting, or for other reasons warranting such an extension in the opinion of the Bureau of Land Management.

(b) A lessee, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to be filed in the Land Office, be granted, subject to the acreage limitation under paragraph (a) (1) of this section, a lease for additional acreage, if the authorized officer of the Bureau of Land Management, after consultation with the Mining Supervisor of the Geological Survey shall determine that the increased acreage will result in conservation of natural resources and will provide for the most economical and efficient recovery of a minable deposit without waste. In applying this paragraph, fringe acreage in an area not of interest to more than one operator, and lacking sufficient reserves of phosphate deposits to warrant independent development, may be leased noncompetitively without publication either by separate lease or by adding to an existing leasehold (within the aggregate limitation of 2,560 acres), subject to a bonus of not less than $1 an acre, a minimum royalty, and such other terms and conditions as may be determined at the time the lease offer is made. If, however, the fringe acreage has sufficient reserves to warrant independent development, or, if, following appropriate inquiry of operators in the area and consultation with the Mining Supervisor, the authorized officer of the Bureau of Land Management determines that there is competitive interest therein, the lands will be offered competitively under § 3162.6.

§ 3161.2 Qualifications of applicant.

(a) Permits and leases may be issued to citizens of the United States, associations of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file in the proper land office specified in § 3162.1 the following:

(1) If an individual, a statement as to citizenship indicating whether native born or naturalized.

(2) If an association (including a partnership), a certified copy of the articles of association and the same showing as to citizenship and acreage holdings of its members as required of an individual.

(3) If a corporation, a statement showing:

(i) The State in which it is incorporated;

(ii) That it is authorized to hold permits and leases of the mineral for which the permit or lease is sought and the person executing an instrument on behalf of the corporation is authorized to act in such matters;

(iii) The percentage of voting stock, of all the stock owned by aliens, and of all the stock owned by those outside of the United States. If more than 10 percent of the stock is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each;

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class of the corporation;

(4) A statement that holdings do not exceed the acreage limitation specified in § 3161.1

(d) Where the information required under paragraph (c) of this section has previously been filed, a reference by serial number to the record in which it

has been filed, together with a statement as to any amendments will be accepted.

§ 3161.3 Prospecting permits.

§ 3161.3–1 Application for prospecting permit.

(a) The act of March 18, 1960 (Pub. Law 86–391, 74 Stat. 7), authorizes, among other things, the issuance of phosphate prospecting permits. All applications for such a permit shall be filed in duplicate in the office specified in § 3162.1. A filing fee of $10, which is not returnable, and full payment of the first year's rental in the amount specified in § 3161.3–3, must accompany the application. No specific form is required but the application should:

(1) Contain the applicant's name and address and his qualifications as to citizenship and acreage holdings as set forth in § 3161.2(b).

(2) Contain a description of the lands for which permit is desired as specified in § 3162.1.

(b) All applications must be signed by the applicant or his attorney in fact, and if executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney in fact to make such statement or to execute all statements which may be required under these regulations. Where such power of attorney is filed reference thereto may be made upon the filing of subsequent applications. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(c) All applications filed on or after March 18, 1960, the date of enactment of Pub. Law 86–391 (74 Stat. 7), including applications filed on and after the effective date of these amendatory regulations, will be considered with respect to priority in accordance with the time of filing such applications in the appropriate land office.

(d) All appliciations filed in the manner specified in § 2311.2–3 of this chapter, will be deemed simultaneously filed.

§ 3161.3–2 Rights conferred.

Two-year permits grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of or workability of the phosphate deposits. Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of valuable phosphate deposits.

§ 3161.3–3 Permit rental.

A permittee shall pay an annual rental of 25 cents an acre or fraction thereof covered by his permit, but not less than $20 per year, such annual payment of rental shall be made on or before the anniversary date of the permit. The payment of such rental will be required as to permits issued upon applications filed prior to the effective date of these amendatory regulations.

§ 3161.3–4 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond of not less than $1,000.

§ 3161.3–5 Extension of permit.

Phosphate permits may be extended by an authorized officer of the Bureau of Land Management for an additional period, not in excess of four years, as he deems advisable, if he finds, after consultation with the Mining Supervisor of the Geological Survey, that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension. An application for extension shall be filed in duplicate in the proper land office within the period beginning 90 days prior to the date of expiration of the permit. The application must be accompanied by a $10 filing fee which is not returnable, and must show what efforts, if any, the permittee has made to comply with the terms of his permit and the reasons for failure to comply therewith. The application must also show how much additional time is considered necessary to complete prospecting work. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee.

§ 3161.3–6 Relinquishment, cancellation or termination of permit.

(a) A permittee may relinquish the entire permit acreage or any portion

thereof. A partial relinquishment must describe the lands surrendered and the exact area thereof. A relinquishment must be filed in duplicate in the proper land office. Upon its acceptance it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

(b) Except as provided for in subparagraph (1) of this paragraph, if a permittee fails to comply with the general regulations in force at the date of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(1) Any prospecting permit shall terminate authmatically if the permittee fails to pay the rental at the time specified in §3161.3–3. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of further applications for phosphate prospecting permits. Applications for such permits filed prior to such notation will be rejected.

(c) Where lands embraced in a cancelled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3161.3–7 Reward for discovery under permit.

(a) A permittee who, prior to the expiration of his permit, shows to the Secretary that valuable phosphate deposits have been discovered upon the land covered by the permit is entitled to a preference right lease for all or part of the land, in a reasonably compact form. An application for preference right lease shall be filed in duplicate in the proper land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable phosphate deposits were discovered before the permit expired. The application must be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof. The lease will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) The survey of unsurveyed lands embraced in the permit will be made at the expense of the Government prior to the issuance of a lease of the lands.

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the

deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by §3161.2 (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3161.2 (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3161.2 (1) and (4).

Subpart 3162—Competitive Leases

§ 3162.1 Application for lease by competitive bidding.

(a) Applications shall be filed, in duplicate, in the appropriate land office. A filing fee of $10, which is not returnable, must accompany the application. No specific form is required, but the application should include the following.

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the United States Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(3) To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(4) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

(b) The application must be signed by applicant or by his attorney-in-fact supported by the power of attorney.

§ 3162.2 Lease bond.

A compliance bond, in no event less than $5,000, will be required prior to the issuance of a lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate or personal bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 3162.3 Minimum production.

Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

§ 3162.4 Lessee's petition for change in minimum production.

The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and processing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within six months after receipt of this information the authorized officer, after considering what would be a reasonable period within which to mine the leased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

§ 3162.5 Offer of lands or deposits for lease by competitive bidding.

If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding either at public auction or by sealed bids as provided in the notice of lease offer.

§ 3162.6 Notice of lease offer.

Notice of the offer of lands for lease will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will show the time and place of sale; whether the sale will be at public auction or by sealed bids; the description of the lands; and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the high bidder to pay for publication of that notice may be obtained. It will also contain a statement that sealed bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening of the bids. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted and statements (a) that the high bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; (b) that the terms of minimum production will not be reduced or waived at the lessee's request except as provided in §§ 3162.3, 3162.4, 3102.3 and

3102.4, or upon satisfactory showing that market conditions are such that the lessee cannot operate except at a loss; (c) that the lease will be canceled if production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease; and (d) that the Government reserves the right to reject any and all bids. The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

§ 3162.7 Bidding requirements; deposits.

(a) At a sale by oral auction the high bidder must deposit with the officer conducting the sale, on the day of the sale, and each bidder at a sale by sealed bids must include with his bid, one-fifth of the amount of his bid.

(b) At the close of an oral auction, or the opening of sealed bids, the officer conducting the sale, subject to the right to reject any and all bids, will award the lease to the high bidder, who will be notified accordingly.

(c) All deposits must be made in cash or by certified check, cashier's check, bank draft, or money order, and the bid shall be accompanied by a statement over the bidder's own signature with respect to citizenship and holdings as prescribed in § 3161.2 (1), (2), (3) and (4). Deposits made on rejected or unsuccessful bids will be returned to the bidders.

§ 3162.8 Action after lease offer.

If the land is surveyed, four copies of the lease will be sent to the high bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental and the cost of publication of the notice of lease offer as specified in § 3162.6, and file a bond as required by § 3162.2 The lease will be dated the first day of the month following its issuance unless the high bidder requests that it be dated the first day of the month of issuance. If the land is unsurveyed, the high bidder will not be required to comply with the requirements of this paragraph until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the high bidder fails to comply with the requirements necessary to complete the lease or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the act. If the lease is executed by an attorney acting in behalf of the bidder, it must be accompanied by the power of attorney. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence such as specified in § 3161.3–7, in order that the authorized officer of the land office may determine to whom the lease may be issued.

Subpart 3163—Payments and Reports

§ 3163.1 Rentals and royalties.

(a) Rentals under all leases or permits shall be paid to the authorized officer of the proper land office, except that rentals and royalties on productive leases shall be paid to the appropriate Mining Supervisor of the Geological Survey. All remittances to the authorized officer of the land office shall be made payable to the Bureau of Land Management, those to the Mining Supervisor shall be made payable to the United States Geological Survey.

(b) All reports concerning operations shall be filed with the Mining Supervisor.

§ 3163.2 Use of silica, limestone or other rock.

Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the authorized officer, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

§ 3163.3 Readjustment of terms and conditions at end of twenty-year periods.

The terms and conditions of a lease may be readjusted at the end of each twenty-year period succeeding the date of the lease. Prior to the expiration of that period, the lessee will be advised

of the reasonable readjustment of terms proposed or notified that no readjustment is to be made for the next period. The lessee may file his consent to such proposed readjustment or inform the authorized officer as to the terms which are unsatisfactory. After considering the suggestions of the lessee, the authorized officer shall make his determination as to the reasonable readjustment of terms to be effective for the twenty-year period under consideration.

Subpart 3164—Assignments

§ 3164.1 Assignments of leases and permits or interests therein.

(a) Leases and permits may be assigned or subleased as to all or part of the lands involved to any person or corporation qualified to hold phosphate leases and permits. The approval of an assignment or transfer of only part of the lands described in a permit or lease will create a separate permit or lease of the lands assigned or transferred which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such an assignment will not extend the life of the permit or the readjustment periods of the lease. Assignments of permits and leases, whether by direct assignment, operating agreements, working or royalty interests, subleases, or otherwise must be filed for approval at the proper land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3161.2 and §3162.1 (a) (4) and (b), must be submitted simultaneously. Assignments of record title interests must be filed in duplicate. A single executed copy of all other instruments of transfer is sufficient. An assignment will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of approval.

(b) An application for approval or any instrument transferring a lease, permit, or interest therein, must be accompanied by a $10 filing fee. An application not accompanied by such fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) Where an assignment does not create separate leases or permits, the assignee must submit a new bond, or the consent of the surety on the bond of record to the substitution of the assignee as principal. If the assignment is for part of the land covered by a lease or permit, the assigned portion must be definitely described and the exact area given, and there must be submitted: (1) The consent of the surety to the assignment and its agreement to remain bound as to the interest retained by the lessee or permittee, and (2) a new bond with the assignee as principal covering the portion of the land assigned.

(d) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease or permit until the effective date of the assignment or sublease. If the assignment or sublease is not approved, their obligations to the United States shall continue as though no such assignment or sublease had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease or permit obligations notwithstanding any term in the assignment or sublease to the contrary.

(e) In order for the heirs or devisees of a deceased holder of a lease or permit, an operating agreement, or a royalty interest in a lease or permit, to be recognized by the Bureau of Land Management as the holder of the lease or permit, agreement or interest, there must be furnished the appropriate showing required under § 3161.3–7.

(f) No assignment will be approved if the assignee fails to file the evidence required by this section and the account under the lease or permit is not in good standing. A minor, except a minor heir or devisee of a lessee or permittee, is not qualified to hold a lease or permit and an assignment to a minor will not be approved.

§ 3164.2 Limitation on overriding royalties.

An overriding royalty interest shall not be created by assignment or otherwise exceeding one percent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the

assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

Subpart 3165—Termination

§ 3165.1 Relinquishment of lease.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvement on the leased lands in accordance with the regulations and terms of the lease.

§ 3165.2 Cancellation of lease.

If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3163.3 or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Subpart 3166—Use Permits for Additional Lands

§ 3166.1 Right to use surface.

A lessee or permittee may be granted a right to use the surface of not exceeding 80 acres of unappropriated and unentered public land not included within the boundaries of a national forest as may be necessary for the proper extraction, treatment, or removal of the leased deposits. The annual charge for the use of such land will be not less than $1 per acre or fraction thereof.

§ 3166.2 Applications for permits.

Applications for permits for such additional land shall be filed in the office specified in § 3162.1(a). A filing fee of $10, which is not returnable, must accompany each application. Such applications must set forth the specific reasons why the additional land is necessary to the permittee or lessee for the use named, describe the land desired in accordance with § 3162.1(a)(2) and also set forth the reasons why the land is desirable and adapted to the use named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the permittee or lessee requests that it be dated the first day of the month of issuance.

This Circular supersedes Circulars 2064 and 2096.

GPO 843-865

CIRCULAR NO. 2158

REDESIGNATION TABLE

(NEW to OLD)

TITLE 43
CODE of FEDERAL REGULATIONS

April 1, 1964 revision

PREFACE

This redesignation table is designed to assist anyone using the April 1, 1964 Special Supplement to Title 43 of the Code of Federal Regulations. The table is a complete listing of the numerical sections under the new numbering system as they are related to the same sections in the old numbering system.

A redesignation table showing the numbered sections in reverse order *(old to new)* is located on pages 693 through 712 of the Special Supplement.

1810.1----------101.21
1810.2----------101.19(b)&(c)
1811.1-1----------137.1
1811.1-2----------137.2
1812.1-1----------221.102
1812.1-2----------221.103
1813.1-1----------240.1
1813.1-2----------240.2(a)
1813.1-3----------240.2(b)
1813.1-4----------240.3
1813.2-1----------240.5
1813.2-2----------240.6
1813.2-3----------240.7
1813.3-1----------240.13
1813.4-1----------240.14
1821.1----------101.9
1821.2-1(a)----------101.20(a)
1821.2-1(b)----------210.2
1821.2-2(a),(b),(c)----------101.1
1821.2-2(d)----------101.20(b)
1821.2-2(e)----------101.20(c)
1821.2-3----------295.8
1821.2-4----------101.19(a)
1821.3-1----------101.18
1821.3-2----------201.1
1821.3-3----------210.3
1821.3-4----------210.4
1821.3-5----------210.11
1821.3-6----------52.1
1821.4-1----------101.3
1821.4-2----------101.4
1821.4-3----------101.5
1821.5-1----------101.10
1821.5-2----------101.11
1821.5-3----------101.15
1821.5-4----------101.17
1821.6-1----------104.1
1821.6-2----------104.2
1821.6-3(a)----------104.3
1821.6-3(b)----------104.4
1821.6-3(c)(1)----------104.5
1821.6-3(c)(2)----------104.5(ft.nt.1)
1821.6-3(d)----------104.6
1821.6-4----------104.8
1821.6-5(a)----------104.9
1821.6-5(b)----------104.11
1821.6-6----------104.13
1821.6-7----------104.14
1821.7-1----------101.6
1821.7-2----------205.1
1821.7-3----------101.7
1821.9-1----------60.1
1821.9-2----------60.5
1822.0-3----------217.1
1822.1-1----------216.1
1822.1-2----------216.2
1822.2-1----------217.5
1822.2-2----------217.7
1822.3-1(a)----------217.8
1822.3-1(b)(1)----------217.13
1822.3-1(b)(2)----------217.14
1822.3-2----------217.9
1822.3-3(a)(1)----------217.11
1822.3-3(b)----------217.12
1822.3-3(b)(1)----------217.15
1822.3-3(b)(2)----------217.16
1822.3-3(b)(3)----------217.17
1822.3-3(b)(4)----------217.18
1822.3-3(b)(5)----------217.19
1822.3-4(a)----------217.20
1822.3-4(b)----------217.21
1822.3-4(c)----------217.22
1822.3-4(d)----------217.23
1822.3-5(a)----------217.24
1822.3-5(b)----------217.25
1822.3-5(c)----------217.26
1822.3-5(d)----------217.27
1822.3-5(e)----------217.28
1822.3-5(f)----------217.29
1822.3-6(a)----------217.30
1822.3-6(b)----------217.31
1822.3-6(c)----------217.32
1822.3-6(d)----------217.33
1822.3-6(e)----------217.34
1822.3-7(a)----------217.39
1822.3-7(b)----------217.35
1822.3-7(c)----------217.36
1822.3-7(d)----------217.37
1822.3-7(e)----------217.38
1822.3-7(f)----------217.40
1822.3-7(g)----------217.41
1822.3-8(a)----------217.42
1822.3-8(b)----------217.43
1822.3-9(a)(b)----------217.44
1822.3-9(c)----------217.45
1822.3-9(d)----------217.46
1822.4-1(a)(b)----------217.47
1822.4-1(c)----------217.48
1822.4-1(d)----------217.49
1822.4-1(e)----------217.50
1822.4-1(f)----------217.51
1822.4-2(a)----------217.52
1822.4-2(b)----------217.53
1822.4-3----------217.54
1822.4-4(a)----------217.55
1822.4-4(b)----------217.56
1822.4-5----------217.57
1823.1-1----------210.5
1823.1-2----------210.6
1823.2-1----------210.7
1823.2-2----------210.8
1823.2-3----------210.9
1823.2-4(a)----------106.15
1823.2-4(b)----------210.11
1923.3----------210.10
1823.4(a)----------101.12
1823.4(b)----------101.13
1823.5-1(a)----------210.12
1823.5-1(b)----------210.13
1823.5-2----------210.14
1824.0-1----------106.1
1824.1-1(a)----------106.2

1824.1-1(b)----------106.3
1824.1-1(c)----------106.4
1824.1-2(a)----------106.5
1824.1-2(b)----------106.13
1824.2-1----------106.7
1824.2-2----------106.8
1824.2-3----------106.9
1824.2-4----------106.10
1824.2-5----------106.11
1824.3----------106.12
1924.4----------106.14
1824.9-1----------60.3
1824.9-2----------65.25
1824.9-3----------65.27
1825.1----------105.1(a)
1825.2----------105.1(b)
1825.3----------105.1(c)
1826.1----------105.2
1840.0-3----------new
1840.0-5----------221.91
1840.0-6(a)(b)----------221.92
1840.0-6(c)----------221.93
1840.0-6(d)----------221.94
1840.0-6(e)----------221.95
1840.0-6(f)----------221.96
1840.0-6(g)----------221.97
1840.0-7----------221.98
1840.0-8----------221.99(c)(d)
1840.0-9(a)----------221.101
1840.0-9(b)----------221.102
1840.0-9(c)----------221.103
1840.0-9(d)----------221.107
1842.2----------221.1
1842.4----------221.2
1842.5-1----------221.3
1842.5-2----------221.4
1842.5-3----------221.5
1843.5----------221.6
1843.5-1----------221.7
1843.6----------221.8
1843.7----------221.9
1843.9----------221.10
1844.1----------221.31
1844.2----------221.32
1844.3----------221.33
1844.4----------221.34
1844.5----------221.35
1844.6----------221.36
1844.9----------221.37
1850.0-3----------new
1850.0-5----------221.91
1950.0-6(a)&(b)----------221.92
1850.0-6(c)----------221.93
1850.0-6(d)----------221.94
1850.0-6(e)----------221.95
1850.0-6(f)----------221.96
1850.0-6(g)----------221.97
1850.0-7(a)----------221.104
1850.0-7(b)----------221.105
1850.0-7(c)----------221.106
1850.0-8(a)(1)&(2)----------221.99(a)&(b)
1850.0-8(b)----------221.100
1850.0-9(a)----------221.102
1850.0-9(b)----------221.103
1850.0-9(c)----------221.107
1851.1----------221.11
1851.2----------221.12
1851.2-1----------221.13
1851.3----------221.14
1851.4----------221.15
1851.5----------221.16
1851.6----------221.17
1851.7----------221.18
1851.8----------221.19
1851.9----------221.20
1852.1-1----------221.51
1852.1-2----------221.52
1852.1-3----------221.53
1852.1-4(a)----------221.54
1852.1-4(b)----------221.55
1852.1-4(c)----------221.56
1852.1-4(d)----------221.57
1852.1-5----------221.58
1852.1-5(a)----------221.59
1852.1-5(b)(1)----------221.60
1852.1-5(b)(2)----------221.61
1852.1-5(b)(3)----------221.62
1852.1-5(c)----------221.63
1852.1-6----------221.64
1852.1-7----------221.65
1852.1-8----------221.66
1852.2-1----------221.67
1852.2-2----------221.68
1852.3-1----------221.69
1852.3-2----------221.70
1852.3-3----------221.71
1852.3-4----------221.72
1852.3-5----------221.73
1852.3-6----------221.74
1852.3-7----------221.75
1852.3-8----------221.76
1852.3-9----------221.77
1853.1----------161.10(a)
1853.2----------161.10(b)
1853.3----------161.10(c)
1853.4----------161.10(k)
1853.5----------161.10(d)
1853.6----------161.10(e)
1853.7(a)----------161.10(f)
1853.7(b)----------161.10(g)
1853.7(c)----------161.10(h)
1853.8----------161.10(i)
1853.9(a)----------161.10(j)
1853.9(b)----------161.10(l)
1855.1----------67.12(a)
1855.2----------67.12(b)
1855.3----------67.12(c)
1855.4----------67.12(d)
1855.5----------67.12(e)
1855.5-1----------67.12(f)
1855.5-2----------67.12(g)
1855.5-3----------67.12(h)

1855.5-4----------67.12(i)
1855.5-5----------67.12(j)
1855.6----------67.12(k)
1855.7----------67.12(l)
1855.8-1----------67.12(m)
1855.8-2----------67.12(n)
1855.9-1----------67.12(o)
1855.9-2----------67.12(p)
1861.1----------101.9
1861.2----------101.12
1862.0-3----------108.1(a)& ft.nt.2
1862.1(a)----------108.1(b)
1862.1(b)----------108.1(c)
1862.1(c)----------108.4
1862.2(a)----------108.1(d)
1862.2(b)----------108.2
1862.2(c)----------108.3
1862.3----------108.5
1862.4----------205.2
1862.5----------108.6
1862.6----------107.3
1862.7----------60.4
1863.5----------211.1
2011.0-3----------107.1
2011.1-1----------107.2
2013.1----------101.2
2013.2-1----------167.9
2013.2-2----------176.10
2013.2-3----------251.14
2013.2-4----------147.4(c)
2013.2-5----------272.28
2013.2-6----------295.7
2013.2-7----------295.11
2013.3-1----------257.3(b)
2013.3-2----------254.6
2013.4----------255.26
2013.5----------273.37
2013.6----------176.20
2013.9-1----------63.22
2013.9-2----------63.49
2013.9-3----------67.11
2013.9-4----------76.16
2013.9-5----------75.25
2013.9-6----------67.6
2022.0-3----------103.1
2022.1----------103.2
2022.2-1(a)----------103.3
2022.2-1(b)----------103.4
2022.3----------103.5
2023.0-3----------102.30 & ft.nt.
2023.0-5----------102.31
2023.0-6(a)----------102.32
2023.0-6(b)----------102.33
2023.0-7----------102.34
2023.1-1----------102.1
2023.1-2----------102.2
2023.1-3(a)----------102.3
2023.1-3(b)----------102.4
2023.1-4----------102.5
2023.2-1(a)-(d)----------102.6
2023.2-1(e)----------102.7
2023.2-2(a)----------102.9
2023.2-2(b)----------102.13(a)(2)
2-23.2-3----------102.8
2023.2-4(a)(1)----------102.10(a)
2023.2-4(a)(2)----------102.13(a)(1)
2023.2-4(b)----------102.10(b)
2023.2-5(a)----------102.11
2023.2-5(b)----------102.13(b)
2023.2-6----------102.12
2023.3-1----------102.14
2023.3-2----------102.15
2023.3-3(a)----------102.16
2023.3-3(b)----------102.17
2023.3-4----------102.18
2023.4-1----------102.19
2023.4-2----------102.20
2023.4-3(a)----------102.21
2023.4-3(b)----------102.24
2023.4-3(c)----------102.22
2023.4-3(d)----------102.28
2023.4-3(e)----------102.29
2023.4-4(a)----------102.23
2023.4-4(b)----------102.27
2023.4-4(c)----------102.25
2023.4-5----------102.26
2023.5-1(a)-(c)----------66.1
2023.5-1(d)----------66.2
2023.5-2----------66.3
2023.5-3----------66.4
2023.5-4----------66.5
2023.6-1(a)(1)----------168.6(a)
2023.6-1(a)(2)----------168.7(a)
2023.6-1(b)----------168.6(e)
2023.6-1(c)----------168.6(b)
2023.6-1(d)----------168.6(c),(d)
2023.6-1(e)----------168.7(b)
2024.0-3----------77.1
2024.0-5----------77.2
2024.1----------77.3
2024.2----------77.4
2025.1----------244.68
2031.1----------51.1
2031.2----------51.1(ft.nt.1)
2033.0-3(a)&(b)----------181.1
2033.0-3(c)----------181.7
2033.0-3(d)(1)&(2)----------181.20
2033.0-3(d)(3)----------181.33
2033.0-3(e)----------181.34
2033.0-5----------181.21
2033.1-1----------181.2
2033.1-2----------181.3
2033.1-3----------181.4
2033.1-4----------181.5
2033.1-5----------181.6
2033.2-1----------181.22
2033.2-2----------181.23
2033.2-3----------181.26
2033.2-4(a)----------181.24
2033.2-4(b)----------181.25

2033.2-5----------181.27
2033.2-6----------181.28
2033.2-7----------181.29
2033.2-8----------181.30
2033.2-9(a)&(b)----------181.31
2033.2-9(c)-(f)----------181.32
2110.0-1----------256.2
2110.0-3----------256.1
2111.1----------256.3
2111.2----------256.4
2111.3----------256.5
2111.4----------256.6
2120.0-2----------165.1
2120.0-3----------165.0
2121.1----------165.2
2121.2-1----------165.3
2121.2-2----------165.4
2121.2-3----------165.5
2121.3----------165.6
2121.4-1----------165.7
2121.4-2----------165.8
2121.4-3----------165.9
2121.5----------165.10
2201.1----------252.1
2202.1----------252.2
2211.0-6(a)----------166.1
2211.0-6(b)----------166.4
2211.0-6(a)(1)to(5)---------166.5
2211.0-6(c)(6)----------166.12
2211.0-6(d)----------166.6
2211.0-6(e)----------166.13
2211.0-6(f)----------166.14
2211.0-6(g)----------166.85
2211.0-7----------166.2
2211.0-8(a)----------166.3
2211.0-8(b)----------166.15
2211.0-8(c)----------166.16
2211.0-8(d)----------166.10
2211.0-8(e)----------166.11
2211.0-9(a)----------166.86
2211.0-9(b)----------166.34
2211.0-9(c)----------166.87 & 167.35
2211.1-1----------167.17
2211.1-2(a)----------166.18
2211.1-2(b)(1)----------166.19
2211.1-2(b)(2)----------166.20
2211.1-2(b)(3)----------166.7
2211.1-2(c)----------166.21
2211.1-3(a)&(b)----------166.8
2211.1-3(c)----------166.9
2211.1-4(a)(1)----------166.44
2211.1-4(a)(2)----------166.47
2211.1-4(b)----------166.45
2211.1-4(c)(1)----------166.45
2211.1-4(c)(2)----------166.46
2211.1-4(d)(1)----------166.50(a)
2211.1-4(d)(2)----------166.50(b)
2211.1-4(d)(3)(i)----------166.51
2211.1-4(d)(3)(ii)---------166.52
2211.1-4(d)(3)(iii)---------166.53
2211.1-4(d)(3)(iv)---------166.54(a)
2211.1-4(d)(3)(v)----------166.54(b)
2211.1-4(d)(4)(i)----------166.55
2211.1-4(d)(4)(ii)---------166.56
2211.1-4(d)(4)(iii)---------166.57
2211.1-4(d)(4)(iv)---------166.58
2211.1-4(d)(4)(v)----------166.59
2211.1-4(d)(4)(vi)---------166.60
2211.1-4(d)(4)(vii)---------166.61
2211.1-4(e)(1)&(2)----------166.48
2211.1-4(e)(3)----------166.49
2211.1-5----------104.11
2211.2-1----------166.24
2211.2-2(a)----------166.22
2211.2-2(b)----------166.25(a),(b),(d)to(h)
2211.2-2(c)----------166.26
2211.2-2(d)(1)----------166.27
2211.2-2(d)(2)----------166.28
2211.2-2(d)(3)----------166.29
2211.2-2(d)(4)----------166.30
2211.2-2(d)(5)----------166.31
2211.2-2(d)(6)(i)----------166.32
2211.2-2(d)(6)(ii)---------166.33
2211.2-2(d)(7)----------166.34
2211.2-2(d)(8)----------166.35
2211.2-2(e)(1)(i)----------166.36
2211.2-2(e)(1)(ii)---------166.37
2211.2-2(e)(1)(iii)---------166.38
2211.2-2(e)(2)----------166.39
2211.2-2(f)----------166.25(c)
2211.2-3(a)----------166.23
2211.2-3(b)----------166.40
2211.2-3(c)(1)----------166.41
2211.2-3(c)(2)----------166.42
2211.2-3(c)(3)----------166.43
2211.2-4----------295.3
2211.3-1(a)----------166.62
2211.3-1(b)----------166.63
2211.3-2(a)----------166.64
2211.3-2(b)----------166.65
2211.3-3----------166.66
2211.4-1(a)----------166.67
2211.4-1(b)----------166.68
2211.4-1(c)----------166.69
2211.4-2(a)----------166.70
2211.4-2(b)----------166.71
2211.4-2(c)----------166.72
2211.4-2(d)----------166.73
2211.5-1(a)----------166.74
2211.5-1(b)----------166.75
2211.5-1(c)----------166.76
2211.5-1(d)----------166.77
2211.5-2(a)(1)----------166.78
2211.5-2(a)(2)----------166.81
2211.5-2(b)----------166.79
2211.5-2(c)----------166.80
2211.5-2(d)----------166.82
2211.5-2(e)----------166.83
2211.5-3----------166.84
2211.6-1(a)(1),(2),(3),-----167.1

2211.6-1(a)(4)(5)----------167.4(a)
2211.6-1(b)----------167.2
2211.6-2(a)----------167.3
2211.6-2(c)----------167.4(b)
2211.6-2(d)----------167.4(c)
2211.6-3(a)(1),(2)----------167.5
2211.6-3(a)(3)----------167.6
2211.6-3(b)----------167.7
2211.6-3(c)----------167.9
2211.6-4(a)----------167.10
2211.6-4(b)(1)----------167.11
2211.6-4(b)(2)----------167.12
2211.6-4(b)(3)----------167.13
2211.6-4(b)(4)----------167.14
2211.6-5(a)&(b)----------167.15
2211.6-5(c)----------167.16
2211.6-5(d)----------167.17
2211.6-5(e)----------167.18
2211.6-5(f)----------167.19
2211.6-5(g)----------167.20
2211.6-5(h)----------167.21
2211.6-6(a)----------167.22
2211.6-6(b)----------167.23
2211.6-6(c)----------167.24
2211.6-6(d)----------167.25
2211.6-6(e)----------167.26
2211.6-6(f)----------167.27
2211.6-6(g)----------167.28
2211.6-7(a)----------167.29
2211.6-7(b)----------167.30
2211.6-7(c)----------167.31
2211.6-8(a)----------167.32
2211.6-8(b)----------167.33
2211.6-9(a)----------169.1
2211.6-9(b)(1)----------169.2
2211.6-9(b)(2)----------169.4
2211.6-9(b)(3)----------169.5
2211.6-9(c)----------169.6
2211.6-9(d)----------169.7
2211.6-9(e)(1)----------169.3
2211.6-9(e)(2)----------169.8
2211.6-9(e)(3)----------169.9
2211.6-9(e)(4)----------169.10
2211.6-9(f)----------169.11
2211.7-1(a)(1)----------230.1
2211.7-1(a)(2)----------230.2
2211.7-1(b)(1)----------230.3
2211.7-1(b)(2)----------230.4
2211.7-1(c)----------230.5
2211.7-1(d)(1)----------230.7
2211.7-1(d)(2)----------230.8
2211.7-1(d)(3)----------230.9
2211.7-1(e)----------230.21
2211.7-1(f)----------230.63
2211.7-1(g)(1)----------230.24
2211.7-1(g)(2)----------230.25
2211.7-1(h)(1)----------230.22
2211.7-1(h)(2)----------230.23
2211.7-1(h)(3)----------230.22
(ft.nt.1)
2211.7-2(a)----------230.5a
2211.7-2(b)----------230.5b
2211.7-3(a)----------230.26
2211.7-3(b)----------230.27
2211.7-3(c)----------230.28
2211.7-4(a)(1)----------230.29
2211.7-4(a)(2)----------230.30
2211.7-4(a)(3)----------230.31
2211.7-4(a)(4)----------230.32
2211.7-4(a)(5)----------230.33
2211.7-4(a)(6)----------230.34
2211.7-4(b)(1)----------230.38
2211.7-4(b)(2)----------230.39
2211.7-4(b)(3)----------230.40
2211.7-5(a)----------230.42
2211.7-5(b)----------230.43
2211.7-6(a)(1),(2),(3)------230.47
2211.7-6(a)(4)----------230.44
2211.7-6(b)----------230.6
2211.7-6(c)----------230.45
2211.7-6(d)(1)----------230.41
2211.7-6(d)(2)----------230.46
2211.7-6(e)----------230.48
2211.7-6(f)(1)----------230.49
2211.7-6(f)(2)----------230.49(ft.nt.)
2211.7-6(g)----------230.50
2211.7-6(h)----------230.51
2211.7-6(i)(1)----------230.52
2211.7-6(i)(2)----------230.53
2211.7-6(i)(3)----------230.53(ft.nt)
2211.8-1----------233.1
2211.8-2(a)----------233.2
2211.8-2(b)----------233.3
2211.8-2(c)----------233.4
2211.8-3(a)----------233.6
2211.8-3(b)----------233.7
2211.8-3(c)----------233.10
2211.8-3(d)----------233.11
2211.8-3(e)----------233.12
2211.8-4(a)----------233.8
2211.8-4(b)----------233.9
2211.8-5(a)----------233.13
2211.8-5(b)----------233.14
2211.8-5(c)----------233.15
2211.8-6(a)----------233.17
2211.8-6(b)----------233.18
2211.8-7(a)----------233.5
2211.8-7(b)----------233.24
2211.8-7(c)----------233.25
2211.8-7(d)----------233.23
2211.8-7(e)----------233.21
2211.8-8(a)----------233.19
2211.8-8(b)----------233.20
2211.8-8(c)----------233.22
2211.8-8(d)(1)----------233.26
2211.8-8(d)(2)----------233.27
2211.8-9----------233.16
2211.9-1(a)----------65.1
2211.9-1(b)----------65.2
2211.9-1(c)(1)&(2)----------65.3
2211.9-1(c)(3)----------65.3a
2211.9-1(c)(4)----------65.3b

2211.9-1(d)----------65.3c
2211.9-1(e)----------65.4
2211.9-1(f)----------65.14
2211.9-1(a)----------65.5
2211.9-2(b)----------65.6
2211.9-2(c)----------65.8
2211.9-2(d)----------65.24
2211.9-3(a)----------65.9
2211.9-3(b)----------65.10
2211.9-4(a)----------65.11
2211.0-4(b)----------65.12
2211.9-4(c)----------65.13
2211.9-5(a)(1)----------65.15
2211.9-5(a)(2)----------65.17(a)
2211.9-5(a)(3)----------65.16
2211.9-5(b)----------65.17b
2211.9-5(c)----------65.17c
2211.9-5(d)----------65.19
2211.9-6(a)----------65.20
2211.9-6(b)----------65.21
2211.9-6(c)----------65.22
2211.9-7(a)----------65.23
2211.9-7(b)----------65.25
2211.9-7(c)----------65.18
2211.9-7(d)----------65.26
2211.9-8(a)----------65.29
2211.9-8(b)----------65.30
2212.0-3(a)----------176.1
2212.0-3(b)----------176.1(ft.nt.)
2212.0-3(c)----------67.1
2212.0-6(a)----------176.3
2212.0-6(b)----------176.2
2212.0-6(c)----------176.6
2212.0-6(d)----------176.12
2212.0-6(e)----------176.13
2212.0-6(f)----------176.18
2212.0-7(a)----------176.9
2212.0-7(b)(1)----------67.2
2212.0-7(b)(2)----------67.3
2212.1-1(a)----------176.4
2212.1-1(b)----------176.5
2212.1-2----------176.8(a)&(b)
2212.1-3----------176.10
2212.1-4----------176.11
2212.2-1----------176.7
2212.2-2----------176.8 (c)&(d)
2212.2-3----------176.15
2212.3-1----------176.14
2212.3-2----------176.17
2212.4----------176.16
2212.5----------176.19
2212.9-1(a)-(f)----------67.5
2212.9-1(g)----------67.6
2212.9-2----------67.7
2212.9-3----------67.4
2212.9-4----------67.8
2213.0-3----------81.1
2213.0-6----------81.3
2213.1-1(a)----------81.1a
2213.1-1(b)----------81.1b
2213.1-1(c)----------81.1c
2213.1-1(d)----------81.1d
2213.1-2(a)&(b)----------81.2
2213.1-2(c)----------81.2a
2213.1-2(d)----------81.6
2213.1-2(e)----------81.4
2213.1-3----------81.7
2213.1-4----------81.8
2213.2----------81.5
2213.3----------81.9
2214.0-3(a)----------140.1
2214.0-3(b)----------141.1
2214.0-3(c)----------141.9
2214.0-3(d)----------141.15
2214.0-3(e)----------141.19
2214.0-3(f)----------141.24
2214.1-1(a)----------140.2
2214.1-1(b)----------140.3
2214.1-2----------140.4
2214.1-3(a)----------140.6
2214.1-3(b)----------140.5
2214.1-3(c)----------140.7
2214.1-4(a)&(b)----------140.8
22.4.1-4(c)----------140.10
2214.1-5(a)----------140.9
2214.1-5(b)----------140.11
2214.1-6----------140.12
2214.2-1(a)----------141.2
2214.2-1(b)----------141.3
2214.2-1(c)----------141.4
2214.2-2(a)----------141.5
2214.2-2(b)----------141.6
2214.2-3----------141.7
2214.2-4----------141.8
2214.3-1----------141.10
2214.3-2----------141.11
2214.3-3----------141.12
2214.3-4----------141.13
2214.3-5----------141.14
2214.4-1----------141.16
2214.4-2----------141.17(a)
2214.4-3----------141.17(b)
2214.4-4----------141.18(a)
2214.4-5----------141.18(b)
2214.5-1----------141.20
2214.5-2----------141.21
2214.5-3----------141.22
2214.5-4----------141.23
2214.6-1----------141.25
2214.6-2----------141.26
2214.6-3----------141.27
2214.6-4----------141.28
2215.0-2----------260.3
2215.0-3----------260.1
2215.0-5----------260.2
2215.1----------260.4
2215.2----------260.5
2215.3----------260.6
2215.4----------260.7
2221.1-1----------130.5
2221.1-2----------130.6
2221.1-3----------130.7

2221.1-4----------130.8
2221.2-1----------130.1
2221.2-2(a)----------130.2
2221.2-2(b)----------130.3
2221.2-2(c)----------130.4
2221.3-1----------132.1
2221.3-2(a)----------132.2
2221.3-2(b)(1)&(2)----------132.11
2221.3-2(b)(3)----------132.12
2221.3-2(c)----------132.9
2221.3-3(a)----------132.3
2221.3-3(b)----------132.4
2221.3-3(c)----------132.6
2221.3-3(d)----------132.7
2221.3-4----------132.5
2221.3-5----------132.8
2221.3-6----------132.10
2221.3-7----------132.13
2221.3-8----------132.14
2221.4----------133.1
2221.8----------130(ft.nt.1)
2221.9-1(a)----------61.1
2221.9-1(b)----------61.17
2221.9-2----------61.2
2221.9-3----------61.3
2221.9-4(a)(1)----------61.4
2221.9-4(a)(2)----------61.5
2221.9-4(a)(3)----------61.6
2221.9-4(a)(4)----------61.7
2221.9-4(a)(5)----------61.8
2221.9-4(b)(1)----------61.9
2221.9-4(b)(2)----------61.11
2221.9-4(c)----------61.10
2221.9-4(d)----------61.12
2221.9-4(e)----------61.13
2221.9-4(f)----------61.14
2221.9-4(g)----------61.15
2221.9-4(h)----------61.16
2222.1-1----------270.1
2222.1-2----------270.2
2222.1-3----------270.3
2222.1-4----------270.4
2222.1-5----------270.5
2222.2-1----------270.7
2222.2-2----------270.8
2222.2-3----------270.9
2222.3-1----------270.23
2222.3-2----------270.24
2222.3-3----------270.25
2222.3-4----------270.28
2222.3-5----------270.26
2222.3-6----------270.27
2222.3-7----------270.29
2222.4-1----------270.30
2222.4-2----------270.31(a)
2222.4-3 (a)----------270.31(b),(c), (d)
2222.4-3(b)----------270.32
2222.4-4----------270.33
2222.5-1----------Note under 271
2222.5-2----------271.1
2222.5-3----------271.2
2222.6-1(a)(1)----------272.1
2222.6-1(a)(2)----------272.1(ft.nt.)
2222.6-1(b)----------272.2
2222.6-1(c)(1)----------272.3
2222.6-1(c)(2)----------272.4
2222.6-1(d)----------272.5
2222.6-1(e)----------272.6
2222.6-1(f)----------272.7
2222.6-1(g)----------272.8
2222.6-1(h)----------272.9
2222.6-1(i)----------272.10
2222.6-1(j)----------272.11
2222.6-1(k)----------272.12
2222.6-1(l)----------272.13
2222.6-1(m)----------272.14
2222.6-1(n)----------272.15
2222.6-1(o)----------272.16
2222.6-1(p)----------272.17
2222.6-1(q)----------272.18
2222.6-2(a)----------272.19
2222.6-2(b)----------272.20
2222.6-2(c)----------272.21
2222.6-2(d)----------272.22
2222.6-2(e)----------272.23
2222.6-2(f)----------272.24
2222.6-2(g)----------272.25
2222.6-2(h)----------272.26
2222.6-2(i)----------272.27
2222.6-3----------272.28
2222.6-4(a)----------272.29
2222.6-4(b)----------272.30
2222.6-4(c)(1)----------272.31
2222.6-4(c)(2)----------272.32
2222.6-4(d)----------272.33
2222.6-4(e)(1)----------272.34
2222.6-4(e)(2)----------272.35
2222.6-5(a)----------272.36
2222.6-5(b)----------272.37
2222.6-6(a)----------272.50
2222.6-6(b)----------272.51
2222.9-1(a)----------76.1
2222.9-1(b)----------76.2
2222.9-1(c)----------76.3
2222.9-2(a)----------76.4
2222.9-2(b)----------76.5
2222.9-2(c)----------76.6
2222.9-3(a)----------76.7
2222.9-3(b)----------76.8
2222.9-3(c)----------76.9
2222.9-3(d)----------76.10
2222.9-4(a)----------76.11
2222.9-4(b)----------76.12
2222.9-4(c)----------76.13
2222.9-4(d)----------76.14
2222.9-4(e)----------76.15
2222.9-4(f)----------76.16
2222.9-4(g)----------76.17
2224.1-1----------273.4
2224.1-2----------273.5

2224.2-1(a)----------273.31
2224.2-1(b)----------273.36
2224.2-1(c)----------273.37
2224.2-1(d)----------273.38
2224.2-1(e)(1)----------273.39
2224.2-1(e)(2)----------273.40
2224.2-2(a)----------273.45
2224.2-2(b)----------273.46
2224.2-3(a)----------273.50
2224.2-3(b)----------273.51
2224.2-4(a)----------273.52
2224.2-4(b)----------273.53
2224.3-1----------273.68
2224.3-2----------273.69
2224.3-3----------273.70
2224.3-4----------273.71
2224.3-5----------273.72
2224.3-6----------273.73
2225.0-3----------234.1
2225.0-6----------234.2
2225.0-7----------234.3
2225.1-1----------234.4
2225.1-2----------234.5
2225.1-3----------234.6
2225.2-1----------234.7
2225.2-2----------234.11
2225.2-3----------234.12
2225.3-1----------234.8
2225.3-2----------234.9
2225.3-3----------234.10
2225.4----------234.13
2226.0-1----------232.1
2226.0-3----------232.2
2226.0-6(a)----------232.4
2226.0-6(b)----------232.6
2226.0-7(a)----------232.3
2226.0-7(b)----------232.5
2226.0-7(c)----------232.7
2226.0-7(d)----------232.8
2226.1-1(a)----------232.9
2226.1-1(b)----------232.11
2226.1-1(c)----------232.12
2226.1-1(d)----------232.13
2226.1-2(a)----------232.15
2226.1-2(b)----------232.16
2226.1-2(c)----------232.17
2226.1-3----------232.18
2226.1-4(a)----------232.19
2226.1-4(b)----------232.20
2226.1-4(c)----------232.21
2226.1-4(d)----------232.22
2226.1-4(e)----------101.14
2226.1-4(f)----------232.23
2226.1-4(g)----------232.24
2226.1-5(a)----------232.25
2226.1-5(b)----------232.26
2226.1-5(c)----------232.27
2226.1-5(d)----------232.28
2226.1-5(e)----------232.29
2226.1-5(f)----------232.30
2226.1-5(g)----------232.31
2226.1-5(h)----------232.32
2226.1-5(i)----------232.33
2226.1-5(j)----------232.34
2226.105(k)----------232.35
2226.1-6(a)----------104.10
2226.1-6(b)----------104.11
2226.1-6(c)----------104.12
2226.1-7----------232.61
2226.1-8----------232.62
2226.2-1(a)----------232.36
2226.2-1(b)----------232.36(ft.nt.)
2226.2-2----------232.38
2226.2-3----------232.37(a)
2226.2-4----------232.37(b)&(c)
2226.2-5----------232.37(d)
2226.2-6----------232.37(e)
2226.2-7(a)----------232.39
2226.2-7(b)----------232.40
2226.2-7(c)----------232.41
2226.2-7(d)----------232.42
2226.2-7(e)----------232.43
2226.2-7(f)----------232.44
2226.2-7(g)----------232.45
2226.2-7(h)----------232.47
2226.2-7(i)----------232.46
2226.2-7(j)----------232.48
2226.2-7(k)----------232.49
2226.2-7(l)----------232.50
2226.2-7(m)----------232.51
2226.2-7(n)----------232.52
2226.2-7(o)----------232.53
2226.2-7(p)----------232.54
2226.2-7(q)----------232.55
2226.2-7(r)----------232.56
2226.2-8(a)----------232.57
2226.2-8(b)----------232.58
2226.3-1----------232.59
2226.3-2----------232.60
2226.4-1(a)----------230.101
2226.4-1(b)----------230.102
2226.4-1(c)----------230.103
2226.4-2(a)----------230.104
2226.4-2(b)----------230.105
2226.4-3----------230.106
2226.4-4----------230.107
2226.4-5(a)----------230.108
2226.4-5(b)----------230.109
2226.4-6----------230.110
2226.4-7----------230.111
2226.4-8----------230.41
2231.0-3----------253.1
2231.1----------253.2
2231.2----------253.3
2231.3----------253.4
2232.0-1----------254.4
2232.0-3----------254.1
2232.0-6----------254.2
2232.0-7----------254.3
2232.1-1----------254.7
2232.1-2(a)----------254.11
2232.1-2(b)----------254.12

2232.1-3----------254.10(a)(b)
2232.1-4----------254.6
2232.2-1----------254.5
2232.2-2----------254.9
2232.2-3----------254.8
2232.2-4----------254.10(c)
2232.2-5----------254.14
2233.0-2----------257.2
2233.0-3----------257.1
2233.0-6(a)----------257.4
2233.0-6(b)----------257.5
2233.1-1----------257.6
2233.1-2----------257.18
2233.1-3----------257.7
2233.1-4(a)----------257.8
2233.1-4(b)----------257.9
2233.2----------257.3
2233.3-1----------257.11
2233.3-2----------257.12
2233.3-3----------257.13
2233.3-4----------257.15
2233.3-5----------257.19
2233.4----------257.14
2233.5----------257.17
2233.6----------257.16
2233.7----------257.10
2233.9-1(a)----------64.1
2233.9-1(b)----------64.2
2233.9-1(c)----------64.3
2233.9-1(d)----------64.4
2233.9-1(e)----------64.5
2233.9-1(f)----------64.6
2233.9-2(a)----------64.7
2233.9-2(b)----------64.8
2233.9-2(c)----------64.9
2233.9-2(d)----------64.10
2233.9-2(e)----------64.11
2233.9-2(f)----------64.12
2233.9-3(a)----------64.13
2233.9-3(b)----------64.14
2233.9-3(c)----------64.15
2234.1-1(a)(2)----------244(ft.nt.1)
2234.1-1(a)(3)----------244.13
2234.1-1(b)----------244.1
2234.1-2(a)----------244.3
2234.1-2(b)----------244.4
2234.1-2(c)----------244.5
2234.1-2(d)----------244.6
2234.1-2(e)----------244.2
2234.1-3(a)----------244.7
2234.1-3(b)----------244.8
2345.1-3(c)----------244.9
2234.1-3(d)----------244.10
2234.1-3(e)----------244.11
2234.1-3(f)----------244.12
2234.1-4(a)----------244.14
2234.1-4(b)----------244.15
2234.1-5(a)----------244.16
2234.1-5(b)----------244.17
2234.1-5(c)----------244.18
2234.1-5(d)----------244.19
2234.1-6----------244.21
2234.2-1(a)(1)----------74.1
2234.2-1(a)(2)----------74.2
2234.2-1(a)(3)----------74.3
2234.2-1(b)(1)----------74.4
2234.2-1(b)(2)----------74.5
2234.2-1(c)(1)----------74.6
2234.2-1(c)(2)----------74.7
2234.2-1(d)(1)----------74.8
2234.2-1(d)(2)----------74.9
2234.2-1(d)(3)----------74.10
2234.2-1(d)(4)----------74.11
2234.2-1(d)(5)----------74.12
2234.2-1(d)(6)----------74.13
2234.2-1(d)(7)----------74.14
2234.2-1(d)(8)----------74.15
2234.2-1(d)(9)----------74.16
2234.2-1(d)(10)----------74.17
2234.2-1(d)(11)----------74.18
2234.2-1(e)(1)----------74.19
2234.2-1(e)(2)----------74.20
2234.2-1(f)----------74.21
2234.2-2(a)----------243.1
2234.2-2(b)----------243.2
2234.2-2(c)(1)----------243.3
2234.3-3(c)(2)----------243.4
2234.2-2(c)(3)----------243.5
2234.2-2(d)----------243.6
2234.2-2(e)(1)----------243.7
2234.2-2(e)(2)----------243.8
2234.2-2(e)(3)----------243.9
2234.2-2(e)(4)----------243.10
2234.2-2(e)(5)----------243.11
2234.2-2(e)(6)----------243.12
2234.2-2(e)(7)----------243.13
2234.2-2(e)(8)----------243.14
2234.2-2(e)(9)----------243.15
2234.2-2(e)(10)----------243.16
2234.2-2(e)(11)----------243.17
2234.2-2(e)(12)----------243.18
2234.2-2(e)(13)----------243.19
2234.2-2(f)----------243.20
2234.2-3(a)(1)----------244.52
2234.2-3(a)(2)----------244.53
2234.2-3(b)(1)----------115.154
2234.2-3(b)(2)----------115.155
2234.2-3(b)(3)----------115.156
2234.2-3(b)(4)----------115.157
2234.2-3(b)(5)----------115.159
2234.2-3(b)(6)(i)----------115.158
2234.2-3(b)(6)(ii)----------115.161
2234.2-3(b)(6)(iii)----------115.160
2234.2-3(b)(7)----------115.162
2234.2-3(b)(8)----------115.163
2234.2-3(b)(9)----------115.164
2234.2-3(b)(10)----------115.165
2234.2-3(b)(11)----------115.166
2234.2-3(b)(12)----------115.167
2234.2-3(b)(13)----------115.168
2234.2-3(b)(14)----------115.169
2234.2-3(b)(15)----------115.170

2234.2-3(b)(16)----------115.171
2234.2-3(b)(17)----------115.172
2234.2-3(b)(18)----------115.173
2234.2-3(b)(19)----------115.174
2234.2-3(b)(20)----------115.175
2234.2-3(b)(21)----------115.176
2234.2-3(b)(22)----------115.177
2234.2-3(b)(23)----------115.178
2234.2-3(b)(24)----------115.179
2234.2-4(a)----------244.54
2234.2-4(b)----------244.55
2234.2-4(c)----------244.56
2234.2-5(a)----------244.57
2234.2-5(b)----------244.58
2234.2-5(c)----------244.59
2234.3-1(a)(1)(i)to(iv)-----244.22
2234.3-1(a)(1)(v)to(vi)-----244.23
2234.3-1(a)(2)----------244.24
2234.3-1(a)(3)----------244.25
2234.3-1(a)(4)----------244.26
2234.3-1(b)----------244.27
2234.3-1(c)----------244.28
2234.3-2(a)----------244.29
2234.3-2(b)(1)----------244.30
2234.3-2(b)(2)----------244.31
2234.3-2(c)----------244.32
2234.3-2(d)----------244.33
2234.3-2(e)(1)----------244.34
2234.3-2(e)(2)----------244.35
2234.3-2(f)----------244.36
2234.3-2(g)----------244.37
2234.4-1(a)----------244.39
2234.4-1(b)(1)----------244.40
2234.4-1(b)(2)----------244.41
2234.4-1(b)(3)----------244.42
2234.4-1(b)(4)----------244.43
2234.4-1(c)(1)-(5)----------244.44
2234.4-1(c)(6)----------244.45
2234.4-1(c)(7)----------244.46
2234.4-1(c)(8)----------244.47
2234.4-2----------244.69
2234.5-1(a)----------244.60
2234.5-1(b)----------244.62
2234.5-1(c)----------244.64
2234.5-1(d)----------244.65
2234.5-1(e)----------244.66
2234.5-2----------244.67
2234.5-3(a)----------202.1
2234.5-3(b)----------202.2
2234.5-3(c)(1)----------202.3
2234.5-3(c)(2)----------202.4
2234.5-3(c)(3)----------202.5
2234.5-3(c)(4)----------202.6
2234.5-3(d)----------202.7
2234.5-3(e)----------202.8
2234.5-3(f)(1)----------202.9
2234.5-3(f)(2)----------202.11
2234.5-3(g)----------202.10
2234.5-3(h)----------202.12
2234.6-1----------244.48
2234.6-2----------244.49
2234.6-3----------244.50
2234.6-4----------244.51
2235.1-1(a)----------251.1
2235.1-1(b)----------251.2
2235.1-1(c)----------251.3
2235.1-1(d)----------251.4
2235.1-1(e)----------251.5
2235.1-1(f)----------251.6
2235.1-1(g)----------251.7
2235.1-1(h)----------251.8
2235.1-1(i)----------251.9
2235.1-1(j)----------251.10
2235.1-1(k)----------251.11
2235.1-1(l)----------251.12
2235.1-1(m)----------251.13
2235.1-1(n)(1)----------251.14
2235.1-1(n)(2)----------251.15
2235.1-2(a)----------251.17
2235.1-2(b)----------251.18
2235.1-2(c)----------251.19
2235.1-2(d)----------251.20
2235.1-2(e)----------251.21
2235.1-2(f)----------251.22
2235.2-1----------62.1
2235.2-2----------62.2
2235.2-3(a)----------62.3
2235.2-3(b)----------62.4
2235.2-4(a)----------62.5
2235.2-4(b)----------62.6
2235.2-4(c)----------62.7
2235.2-5----------62.8
2235.2-6----------62.9
2235.2-7----------62.10
2235.2-8----------62.11
2235.2-9(a)----------62.12
2235.2-9(b)----------62.13
2236.0-2(a)----------258.2
2236.0-2(b)----------258.18
2236.0-3----------258.1
2236.0-5----------258.17
2236.0-6----------258.3
2236.0-7(a)----------258.9
2236.0-7(b)----------258.10
2236.1-1(a)----------258.4 & 115.150
2236.1-1(b)----------258.19
2236.1-2----------258.5
Deleted----------258.20(a)
2236.2-1----------258.7
2236.2-2----------258.12
2236.2-3(a)----------258.21
2236.2-3(b)----------258.22
2236.3-1----------258.8
2236.3-2----------258.20(b)&(c)
2236.3-3----------258.15
2236.4-1----------258.6
2236.4-2----------258.13
2236.4-3----------258.11
2236.5----------258.14
2236.6-1----------258.24
2236.6-2----------258.16
2236.6-3----------258.23

2241.0-2----------75.21
2241.0-3----------75.19
2241.0-5----------75.20
2241.0-7----------75.22
2241.1-1(a)----------75.23
2241.1-1(b)----------75.24
2241.1-1(c)----------75.25
2241.1-2----------75.26
2241.1-3----------75.27
2241.1-4----------75.28
2241.1-5----------75.29
2241.2-1----------75.30
2241.2-2----------75.31
2241.3----------75.32
2241.4----------75.33
2241.5-1----------75.34
2241.5-2----------75.35(a)to(e)
2242.0-3----------255.1
2242.0-6----------255.54
2242.0-8(a)----------230.112
2242.0-8(b)----------230.113
2242.0-8(c)----------230.114
2242.1-1(a)----------255.2
2242.1-1(b)----------255.3
2242.1-2(a)----------255.4
2242.1-2(b)----------255.5
2242.1-2(c)----------255.6
2242.1-2(d)----------255.7
2242.1-2(e)----------255.8
2242.2-1----------255.9
2242.2-2(a)----------255.10
2242.2-2(b)----------255.11
2242.2-3----------255.12
2242.2-4(a)----------255.13
2242.2-4(b)----------255.14
2242.2-5----------255.15
2242.2-6(a)----------255.16
2242.2-6(b)----------255.17
2242.2-7(a)----------255.18
2242.2-7(b)----------255.19
2242.2-7(c)----------255.20
2242.2-8----------255.21
2242.2-9----------255.22
2242.3-1(a)----------255.26
2242.3-1(b)----------255.36
2242.3-2----------255.27
2242.3-3(a)----------255.28
2242.3-3(b)----------255.29
2242.3-4(a)----------255.30
2242.3-4(b)----------255.34
2242.3-5----------255.31
2242.3-6(a)----------255.32
2242.3-6(b)----------255.33
2242.3-7(a)----------255.35
2242.3-7(b)----------255.37
2242.3-7(c)----------255.38
2242.3-8----------255.39
2242.3-9----------255.40
2242.4-1----------255.42
2242.4-2----------255.43
2242.4-3----------255.44
2242.4-4----------255.45
2242.4-5----------255.47
2242.5-1----------255.48
2242.6-1----------255.49
2242.6-2----------255.50
2242.6-3----------255.51
2242.7-1----------255.52
2242.8-1----------255.53
2242.9-1(a)----------80.1
2242.9-1(b)----------80.2
2242.9-2(a)----------80.3
2242.9-2(b)----------80.4
2242.9-2(c)----------80.5
2242.9-2(d)----------80.6
2242.9-2(e)----------80.7
2242.9-2(f)----------80.8
2242.9-2(g)----------80.9
2242.9-2(h)----------80.10
2242.9-2(i)----------80.11
2242.9-2(j)----------80.12
2242.9-2(k)----------80.13
2242.9-2(l)----------80.14
2242.9-2(m)----------80.14a
2242.9-2(n)----------80.14b
2242.9-2(o)----------80.15
2242.9-2(p)----------80.16
2242.9-2(q)----------80.17
2242.9-3(a)----------80.18
2242.9-3(b)----------80.19
2242.9-3(c)----------80.20
2242.9-3(d)----------80.21
2242.9-3(e)----------80.22
2242.9-3(f)----------80.23
2242.9-3(g)----------80.24
2242.9-3(h)----------80.25
2242.9-3(i)----------80.26
2242.9-3(j)----------80.27
2242.9-4----------80.28
2242.9-5(a)to(j)----------80.100
2242.9-5(k)(1)(i)&(2)-------80.101
2242.9-5(k)(3)----------80.102
2243.0-3----------250.1
2243.0-5----------250.2
2243.0-6----------250.7(b)
2243.0-7(a)----------250.6
2243.0-7(b)(1)----------250.7(a)
2243.0-7(b)(2)----------250.7(c)
2243.0-7(c)----------250.8
2243.1-1----------250.3
2243.1-2----------250.4
2243.1-3----------250.9
2243.1-4----------250.10
2243.1-5----------250.11
2243.1-6----------250.12
2243.2----------250.5
2244.1-1----------146.1
2244.1-2----------146.2
2244.1-3----------146.3(a)
2244.1-4(a)----------146.3(b)
2244.1-4(b)----------146.4

2244.1-5(a)	146.5
2244.1-5(b)	146.6
2244.1-5(c)	146.7
2244.1-6	146.8
2244.2-1(a)	147.1
2244.2-1(b)	147.14
2244.2-2(a)	147.2
2244.2-2(b)	147.12
2244.2-2(c)	147.13
2244.2-3	147.4(a)&(b)
2244.2-4(a)	147.5
2244.2-4(b)	147.6
2244.2-5(a)	147.7
2244.2-5(b)	147.8
2244.2-5(c)	147.9
2244.2-6(a)	147.3
2244.2-6(b)	147.10
2244.2-7	147.11
2244.2-8(a)	147.17
2244.2-8(b)	147.18
2244.2-8(c)	147.19
2244.2-8(d)	147.20
2244.3-1	148.1
2244.3-2	148.2
2244.3-3	148.3
2244.4-1(a)	149.1
2244.4-1(b)	149.2
2244.4-1(c)	149.3
2244.4-1(d)	149.4
2244.4-1(e)	149.5
2244.4-1(f)	149.6
2244.4-1(g)	149.7
2244.4-2(a)	149.9
2244.4-2(b)	149.10
2244.4-3(a)	149.11
2244.4-3(b)	149.12
2244.4-4(a)	149.13
2244.4-4(b)	149.14
2244.4-5(a)	149.15
2244.4-5(b)	149.16
2244.4-5(c)	149.17
2244.4-5(d)	149.18
2244.4-6(a)	149.19
2244.4-6(b)	149.20
2244.4-7(a)	149.21
2244.4-7(b)	149.22
2244.4-8(a)	149.23
2244.4-8(b)	149.24
2244.5-1(a)	150.1
2244.5-1(b)	150.2
2244.5-1(c)	150.3
2244.5-1(d)	150.4
2244.5-1(e)	150.5
2244.5-1(f)	150.6
2244.5-2(a)	150.6a
2244.5-2(b)	150.6b
2244.5-2(c)	150.6c
2244.5-2(d)	150.6d
2244.5-2(e)	150.6e
2244.5-2(f)	150.6f
2244.5-2(g)	150.6g
2244.5-2(h)	150.6h
2244.5-2(i)	150.6i
2244.5-2(j)	150.6j
2244.5-2(k)	150.6k
2244.5-2(l)	150.6l
2244.5-3(a)	150.7
2244.5-3(b)	150.8
2244.5-3(c)	150.9
2244.5-3(d)	150.10
2244.5-3(e)	150.11
2244.5-3(f)	150.12
2244.5-4(a)	150.13
2244.5-4(b)	150.14
2244.5-4(c)	150.15
2244.5-4(d)	150.16
2244.5-4(e)	150.17
2244.5-5(a)	150.18
2244.5-5(b)	150.19
2244.5-5(c)	150.20
2244.5-5(d)	150.21
2244.5-5(e)	150.22
2244.5-5(f)	150.23
2244.5-5(g)	150.24
2244.5-5(h)	150.25
2244.5-5(i)	150.26
2244.5-5(j)	150.27
2244.5-5(k)	150.28
2244.5-6(a)	150.29
2244.5-6(b)	150.30
2244.5-6(c)	150.31
2244.5-6(d)	150.32
2244.5-6(e)	150.33
2244.5-6(f)	150.34
2244.5-6(g)	150.35
2244.6-1	151.1
2244.6-2(a)	151.2
2244.6-2(b)	151.3
2244.6-2(c)	151.4
2244.6-2(d)	151.5
2244.6-3(a)	151.6
2244.6-3(b)	151.7
2244.6-3(c)	151.8
2244.6-4	151.9
2244.6-5	151.10
2244.6-6	151.11
2244.7-1(a)	152.1
2244.7-1(b)	152.2
2244.7-1(c)	152.3
2244.7-1(d)	152.4
2244.7-1(e)	152.5
2244.7-1(f)	152.6
2244.7-1(g)	152.7
2244.7-1(h)	152.8
2244.7-1(i)	152.9

2244.7-1(j)----------152.10
2244.7-1(k)----------152.11
2244.7-1(l)----------152.12
2244.7-2(a)----------152.13
2244.7-2(b)----------152.14
2244.7-2(c)----------152.15
2244.7-2(d)----------152.16
2244.7-2(e)----------152.17
2244.7-3(a)----------152.20
2244.7-3(b)----------152.21
2244.7-3(c)----------152.22
2244.7-3(d)----------152.23
2244.7-3(e)----------152.24
2244.7-3(f)----------152.25
2244.7-3(g)----------152.26
2244.7-3(h)----------152.27
2244.7-3(i)----------152.28
2244.7-3(j)----------152.29
2244.7-3(k)----------152.30
2244.7-3(l)----------152.31
2244.7-3(m)----------152.32
2244.7-3(n)----------152.33
2244.7-3(o)----------152.34
2244.7-3(p)----------152.35
2244.7-4(a)----------270.38(a)
2244.7-4(b)----------270.38(b)&(c)
2244.7-4(c)----------270.39
2244.7-4(d)----------270.40
2244.7-4(e)----------270.41
2244.8-1(a)----------230.22
2244.8-1(b)----------230.23
2244.8-2----------230.22(ft.nt.1)
2244.9-1(a)----------115.96
2244.9-1(b)(1)----------115.94
2244.9-1(b)(2)----------115.98
2244.9-1(c)----------115.97
2244.9-1(d)(1)----------115.95
2244.9-1(d)(2)----------115.108
2244.9-1(d)(3)----------115.109
2244.9-1(e)(1)(i)----------115.99
2244.9-1(e)(1)(ii)----------115.100
2244.9-1(e)(1)(iii)----------115.101
2244.9-1(e)(2)(i)&(ii)------115.102
2244.9-1(e)(2)(iii)---------115.107
2244.9-1(e)(2)(iv)----------115.106
2244.9-1(e)(3)----------115.103
2244.9-1(f)----------115.104
2244.9-1(g)----------115.05
2244.9-1(h)----------115.111
2244.9-1(i)----------115.110
2245.0-2----------75.14
2245.0-3----------75.13
2245.0-5----------75.15
2245.1-1----------75.16
2245.1-2----------75.17
2245.2----------75.18
2251.0-3----------119.1
2251.1----------119.6
2251.1-1----------119.7
2251.1-2----------119.8
2251.1-3----------119.9
2251.1-4----------119.10
2251.1-5----------119.5
2251.2(a)&(b)----------119.2
2251.2(c)----------119.11
2251.3----------119.3
2251.4----------119.4
2251.5----------119.12
2253.0-3----------231.1
2253.1-1----------231.2
2253.1-2----------231.3
2253.1-3----------231.4
2253.1-4----------231.5
2253.1-5----------231.6
2253.1-6----------231.7
2253.1-7----------231.8
2253.1-8----------231.9
2253.2-1----------231.10
2253.2-2----------231.11
2253.3----------231.12
2253.4----------231.13
2253.5-1----------231.14
2253.5-2----------231.15
2253.5-3----------231.16
2253.6----------231.17
2253.7----------231.18
2253.8----------231.19
2253.9----------231.20
2254.0-3----------117.1
2254.0-6----------117.6
2254.0-7----------117.2
2254.1-1----------117.3
2254.1-2----------117.4
2254.1-3----------117.5
2254.1-4----------117.7
2254.1-5----------117.8
2254.1-6----------117.9
2254.2----------117.10
2254.3----------117.11
2254.4----------117.12
2254.5----------117.13
2254.6----------117.14
2254.7----------117.15
2254.8----------117.16
2254.9----------117.17
2311.0-1----------295.9(a)
2311.0-3(a)&(b)----------295.1
2311.0-3(c)----------295.2
2311.0-3(d)----------Part 295 (ft.nt.1)
2311.0-5----------295.9(c)
2311.0-6----------295.9(b)
2311.1-1----------295.10
2311.1-2----------295.11
2311.1-3----------295.12
2311.1-4----------295.13
2311.2----------295.15
2311.3----------295.5
2312.0-1----------295.18(a)
2312.0-3----------295.17
2312.1-1(a)-(c)----------295.18(b)-(d)
2312.1-2----------295.19

2312.1-3----------295.20
2315.1----------295.14
2321.1-1(a)----------292.1
2321.1-1(b)----------292.2
2321.1-1(c)----------292.5
2321.1-1(d)----------292.3
2321.1-1(e)----------292.4
2321.1-2(a)----------292.6
2321.1-2(b)----------292.7
2321.1-2(c)----------292.8
2321.1-2(d)----------292.9
2321.1-3(a)----------292.10
2321.1-3(b)----------292.11
2321.1-3(c)----------292.12
2321.1-3(d)----------292.13
2321.1-3(e)----------292.14
2321.1-3(f)----------292.15
2321.1-3(g)----------292.16
2321.1-4(a)----------292.17
2321.1-4(b)----------292.18
2321.1-4(c)----------292.19
2321.1-4(d)----------292.20
2321.1-4(e)----------292.21
2321.1-4(f)----------292.22
2321.3-1----------295.6
2321.3-2----------295.7
2323.0-1----------230.10
2323.0-3----------230.1
2323.0-5(a)----------230.11
2323.1-1----------230.12
2323.1-2----------230.14
2323.1-3----------230.15
2323.1-4----------230.19
2323.2----------230.13
2323.3----------230.16
2323.4(a)----------230.17
2323.4(b)----------230.18
2323.5----------230.30
2325.1----------67.13
2331.1----------295.16
2410.0-2----------296.2(a)
2410.0-3----------296.1
2410.0-4----------296.3
2410.0-6----------296.2(b),(c),(d)
2411.1-1----------296.4(a)
2411.1-2----------296.4(b)
2411.1-3----------296.4(c),(d)
2411.1-4----------296.4(e)
2411.1-5----------296.4(f)
2411.2----------296.5
2411.3----------296.6
2411.4----------296.7
3001.0-5----------188.3
3001.0-6----------188.3
3001.0-7----------188.3
3001.0-8----------188.3
3100.0-2----------191.1
3100.0-5----------192.43a
3100.1----------191.2
3100.2----------191.9
3100.3----------191.7
3101.1----------191.3
3101.2----------191.4
3101.3----------191.8
3102.1----------191.11
3102.2----------191.12
3102.3----------191.25
3102.4----------191.26&.27
3102.5----------191.17
3103.1----------191.5
3102.2----------191.6
3104.1----------191.10
3104.2----------191.15
3104.3----------191.16
3105.1----------192.2
3106.1----------191.13
3120.1-1----------192.1
3120.1-2----------192.3
3120.1-3----------192.4
3120.2-1----------192.5
3120.2-2----------192.6
3120.3-1----------192.7
3120.3-2----------192.8
3120.3-3----------192.9
3120.4----------192.70
3120.5----------192.71
3120.6----------192.72
3121.1----------192.20
3131.2----------192.21
3121.3----------192.22
3121.4----------192.23
3121.5----------192.24
3121.6----------192.25
3122.1----------192.40
3122.2----------192.40(a)
3122.3----------192.41
3122.4-1----------192.60
3122.4-2----------192.61
3122.4-3----------192.62
3122.4-4----------192.63
3123.1----------192.42(a)to(d)
3123.2----------192.42(e)&(f)
3123.3(a)----------192.43b
3123.3(b)----------192.42(g)(1)
3123.4----------192.42(g)(2)
3123.5----------192.42(h),(i),(j),(k)
3123.6----------192.42(l)
3123.7----------192.42(m)
3123.8----------192.42a
3123.9----------192.43
3124.1----------192.50
3124.2----------192.51
3124.3----------192.52
3124.4----------192.53
3124.5----------192.54
3125.1----------192.80
3125.2----------192.81
3125.3----------192.82

3125.4----------192.83
3126.1----------192.100
3126.2----------192.101
3127.1----------192.120
3127.2----------192.120a
3127.3----------192.121
3127.4----------192.122
3127.5----------192.123
3128.1----------192.140
3128.2----------192.141
3128.3----------192.142
3128.4----------192.143
3128.5----------192.144
3128.6----------192.145
3129.1----------192.160
3129.2----------192.161
3130.0-3----------193.1
3130.1----------193.6
3131.1----------193.2
3131.2----------193.3
3131.3----------193.4
3131.4----------193.5
3132.1-1----------193.7
3132.1-2----------193.15
3132.2----------193.11
3132.3-1----------193.9
3132.3-2----------193.8
3132.3-3----------193.10
3132.4-1----------193.12
3132.4-2----------193.13
3132.4-3----------193.14
3132.5----------193.16
3132.6----------193.17
3132.7----------193.18
3133.1----------193.19
3133.2----------193.20
3133.3----------193.21
3133.4----------193.22
3133.5----------193.23
3133.6----------193.24
3134.1----------193.25
3134.2----------193.26
3135.0-1----------193.27
3135.1----------193.28
3135.2----------193.29
3135.3----------193.30
3140.0-3----------194.1
3140.0-6----------194.5
3141.1----------194.3
3141.2----------194.4
3141.3----------194.6
3141.4----------194.7
3142.1----------194.8
3142.2----------194.9
3142.3----------194.10
3142.4----------194.11
3142.5----------194.12
3142.6----------194.13
3143.1----------194.17
3143.2-1----------194.14
3143.2-2----------194.15
3143.2-3----------194.16
3143.3-1----------194.18
3143.3-2----------194.19
3143.3-3----------194.20
3143.4----------194.21
3143.5----------194.22
3143.6----------194.23
3144.1----------194.24
3145.1----------194.25
3150.0-3----------195.1
3150.0-4----------195.5
3151.1----------195.3
3151.2----------195.4
3151.3----------195.6
3151.4----------195.7
3152.1----------195.8
3152.2----------195.9
3152.3----------195.10
3152.4----------195.11
3152.5----------195.12
3152.6----------195.13
3153.1----------195.17
3153.2-1----------195.14
3153.2-2----------195.15
3153.3-1----------195.16
3153.3-2----------195.18
3153.3-3----------195.19
3153.3-4----------195.20
3153.4----------195.21
3153.5----------195.22
3153.6----------195.23
3154.1----------195.24
3154.2----------195.25
3155.1----------195.26
3160.0-3----------196.1
3160.0-4----------196.4
3161.1----------196.2
3161.2----------196.3
3161.3-1----------196.5
3161.3-2----------196.6
3161.3-3----------196.7
3161.3-4----------196.8
3161.3-5----------196.9
3161.3-6----------196.10
3161.3-7----------196.11
3162.1----------196.12
3162.2----------196.13
3162.3----------196.14
3162.4----------196.15
3162.5----------196.16
3162.6----------196.17
3162.7----------196.18
3162.8----------196.19
3163.1----------196.21
3163.2----------196.20
3163.3----------196.24
3164.1----------196.22
3164.2----------196.23
3165.1----------196.25
3165.2----------196.26
3166.1----------196.27(a)
3166.2----------196.27(b)
3170.0-1----------197(ft.nt.1)

3170.0-3----------197.1
3171.1----------197.2
3171.2----------197.3
3171.3----------197.4
3171.4----------197.5
3171.5----------197.6
3171.6----------197.7
3171.7----------197.8
3180.0-3----------198.1
3181.1----------198.3
3181.2----------198.4
3181.3----------198.5
3181.4----------198.6
3181.5----------198.7
3182.1----------198.8
3182.2----------198.9
3182.3----------198.10
3182.4----------198.11
3182.5----------198.12
3182.6----------198.13
3183.1-1----------198.14
3183.1-2----------198.15
3183.2-1----------198.16
3183.2-2----------198.17
3183.2-3----------198.18
3183.3-1----------198.19
3183.3-2----------198.20
3183.3-3----------198.21
3183.3-4----------198.22
3183.4----------198.23
3183.5-1----------198.24
3183.5-2----------198.25
3184.1----------198.26
3185.1----------198.27
3190.0-3----------203.1
3191.1----------203.2
3191.2----------203.3
3191.3----------203.4
3191.4----------203.5
3191.5----------203.6
3191.6----------203.7
3210.0-3----------200.1
3210.0-6----------200.10
3211.1----------200.2
3211.2----------200.3
3211.3----------200.4
3212.1----------200.5
3212.2----------200.6
3212.3----------200.7
3212.4----------200.8
3212.5----------200.9
3220.0-3----------200.31
3220.0-6----------200.32
3220.0-7----------200.33
3221.1----------200.34
3221.2----------200.35
3221.3----------200.36
3221.4----------200.37
3221.1----------200.39
3222.2----------200.40
3222.3----------200.41
3222.4----------200.42
3222.5----------200.43
3222.6-1----------200.44
3222.6-2----------200.38
3222.7 ----------200.45
3223.1----------200.46
3224.1----------200.47
3224.2----------200.48
3225.1----------200.49
3226.1----------200.50
3227.1----------200.51(a)
3227.2----------200.51(b)
3227.3----------200.51(c)
3227.4----------200.51(d)
3310.0-3----------200.80
3311.1----------200.81
3311.2----------200.82
3311.3----------200.83
3312.1----------200.84
3312.2----------200.86
3313.1----------200.85
3313.2----------200.87
3321.0-3----------187.1
3321.1----------187.2
3321.2----------187.3
3321.3----------187.4
3321.4----------187.5
3321.5----------187.6
3321.6----------187.7
3322.0-3----------188.1
3322.1-1----------188.2
3322.1-2----------188.4
3322.1-3----------188.5(b)(c)
3322.1-4----------188.6
3322.1-5----------188.7
3322.1-6----------188.8
3322.1-7----------188.9
3322.2-1----------188.10
3322.2-2----------188.11
3322.3-1----------188.12
3322.3-2----------188.13
3322.3-3----------188.14
3322.3-4----------188.15
3322.4----------188.16
3322.5----------188.17
3322.6-1----------188.18
3322.6-2----------188.19
3322.7-1----------188.20
3322.7-2----------188.21
3323.1-1----------199.1
3323.1-2----------199.2
3323.1-3----------199.3
3323.1-4----------199.4
3323.1-5----------199.5
3323.1-6----------199.6
3323.1-7(a)----------199.7
3323.1-7(b)----------199.8
3323.1-7(c)----------199.9
3323.1-8(a)----------199.10
3323.1-8(b)----------199.11
3323.1-8(c)----------199.12

3323.2-1----------199.13
3323.2-2----------199.14
3323.2-3----------199.15
3323.2-4----------199.16
3323.2-5----------199.17
3323.2-6(a)----------199.18
3323.2-6(b)----------199.19
3323.2-6(c)----------199.20
3323.2-7(a)----------199.21
3323.2-7(b)----------199.22
3323.2-7(c)----------199.23
3323.2-7(d)----------199.24
3324.0-3----------199.40
3324.1-1----------199.41
3324.1-2----------199.42
3324.1-3----------199.43
3324.2-1----------199.44
3324.2-2----------199.45
3324.2-3----------199.46
3324.3----------199.47
3324.4----------199.48
3324.5-1----------199.49
3324.5-2----------199.50
3324.5-3----------199.51
3324.5-4----------199.52
3324.5-5----------199.53
3324.5-6----------199.54
3324.5-7----------199.55
3324.5-8----------199.56
3325.0-3----------199.61
3324.1----------199.62
3325.2----------199.63
3325.3----------199.64
3326.0-3----------199.70
3326.1----------199.71
3326.2----------199.72
3326.3----------199.73
3326.4-1----------199.74
3326.4-2----------199.75
3326.5-1----------199.76
3326.5-2----------199.77
3326.5-3----------199.79
3326.6----------199.78
3326.7----------199.80
3326.8----------199.81
3380.0-3----------201.1
3380.1----------210.2
3380.2----------201.3
3380.3----------201.4
3380.4----------201.5
3381.1----------201.10
3381.2----------201.11
3381.3----------201.12
3381.4----------201.13
3381.5----------201.14
3382.1----------201.20
3382.2----------201.20a
3382.3----------201.21
3382.4----------210.22
3382.5----------201.33
3382.6----------201.24
3382.7----------201.25
3383.1----------201.40
3383.2----------201.41
3383.2----------201.42
3383.4----------201.43
3383.5----------201.50
3384.2----------201.51
3385.1----------201.60
3385.2----------201.61
3385.3----------201.62
3385.4----------201.63
3386.1----------201.80
3386.2----------201.81
3387.1----------201.110
3387.2----------201.111
3387.3-1----------201.112
3387.3-2----------201.113
3387.3-3----------201.114
3387.3-4----------201.115
3387.3-5----------201.116
3387.3-6----------201.122
3387.4-1----------2-1.117
3387.4-2----------201.118
3387.4-3----------201.119
3387.4-4----------201.120
3387.4-5----------201.121
3387.5----------201.123
3387.6----------201.124
3400.1(a)----------185.33&185.1
3400.1(b)----------185.33(ft.nt.)
3400.1(b)(1)----------185.69.1 & .2
3400.2----------185.2
3400.3----------185.35
3400.4----------185.36
3401.1----------185.3
3401.2----------185.4
3410.0-6----------185.5
3411.1----------185.6
3411.2----------185.7
3411.3----------185.8
3411.4----------185.9
3411.5----------185.10
3412.1----------185.11
3413.1----------185.12
3413.2----------185.13
3414.1----------185.14
3414.2----------185.15
3415.1----------185.21
3415.2----------185.22
3415.3----------185.23
3416.1----------185.24
3416.2----------185.25
3416.3----------185.26
3416.4----------185.27
3416.5----------185.28
3416.6----------185.29
3416.7----------185.30
3416.8----------185.31
3416.9----------185.32
3420.1----------185.16
3420.3----------185.17

3420.4----------185.18
3420.5----------185.19
3420.6----------185.20
3421.0-3----------185.94
3421.1----------185.95
3421.2----------185.96
3421.3----------185.97
3421.4----------185.98
3421.5----------185.99
3430.0-1----------185.160
3431.1----------185.161
3431.2----------185.162
3431.3----------185.163
3432.1----------168.6
3432.2----------168.7
3440.1----------185.38
3440.2----------185.39
3440.3----------185.40
3441.1----------185.41
3441.2----------185.42
3441.3----------185.43
3441.4----------185.44
3441.5----------185.45
3442.1----------185.46
3442.2----------185.47
3443.1----------185.48
3441.1----------185.49(a)
3444.2----------185.49(b)
3445.1----------185.50
3446.1----------185.51
3446.2----------185.52
3450.1----------185.53
3450.1(c)----------101.15
3450.2----------185.84
3450.3----------185.54
3450.4----------185.55
3450.5----------69.8
3451.1----------185.73
3451.2----------185.74
3451.3----------185.61
3452.1----------185.75
3452.2----------185.76
3452.3----------185.77
3453.1----------185.56
3453.2----------185.57
3453.3----------185.58
3453.4----------185.59
3453.5----------185.85
3453.6----------185.60
3455.1----------185.62
3456.1----------185.63
3457.1----------185.64
3458.1----------185.100
3460.1----------185.65
3460.2----------185.66
3460.3----------185.67
3460.4----------185.68
3470.1----------185.69
3470.2----------185.70
3470.3----------185.71
3470.4----------185.72
3481.1----------185.78
3481.2----------185.79
3481.3----------185.80
3481.4----------185.81
3481.5----------185.82
3481.6----------185.83
3482.1----------185.86
3482.2----------185.87
3482.3----------185.88
3482.4----------185.89
3482.5----------185.90
3483.1----------185.91
3483.2----------185.92
3483.3----------185.93
3510.0-3----------185.120
3511.1----------185.121
3512.1----------185.122
3512.2----------185.123
3512.3----------185.124
3512.4----------185.125
3512.5----------185.126
3512.6----------185.127
3512.7----------185.128
3512.8----------185.129
3512.9----------185.130
3513.1----------185.131
3513.2----------185.132
3513.3----------185.133
3513.4----------185.134
3514.1----------185.135
3514.2----------185.136
3514.3----------185.137
3520.0-1----------185.140
3520.0-3----------185.141
3521.1----------185.142
3521.2----------185.143
3522.1----------185.144
3522.2----------185.145
3523.1----------185.146
3523.2----------185.147
3523.3----------185.148
3523.4----------185.149
3523.5----------185.150
3523.6----------185.151
3530.0-1----------185.172
3530.0-3(a)----------185.173
3530.0-3(b)----------185.175
3531.1----------185.174
3532.1----------185.176
3532.2----------185.177
3533.1----------185.178
3533.2----------185.179
3534.1----------185.180
3535.1----------185.181
3535.2----------185.182
3536.1----------185.183
3537.1----------185.184
3537.2----------185.185
3538.1----------185.186

3540.0-1----------186.1
3541.1----------186.2
3541.2----------186.3
3541.3----------186.4
3541.4----------186.5
3541.5----------186.6
3541.6----------186.7
3542.1----------186.8
3542.2----------186.9
3542.3----------186.10
3542.4----------186.11
3542.5----------186.12
3542.6----------186.13
3542.7----------186.14
3542.8----------186.15
3542.9----------186.16
3543.1----------186.17
3543.2----------186.18
3542.3----------186.19
3543.4----------186.20
3543.5----------186.21
3543.6----------186.22
3544.1----------186.23
3545.1----------186.24
3545.2----------186.25
3545.3----------186.26
3610.0-3----------259.1(a)to(d)
3610.0-5----------259.2
3610.1----------259.41
3610.2----------259.71
3611.1----------259.42
3611.2----------259.43
3611.3----------259.44
3611.4----------259.45
3611.5----------259.46
3611.6----------259.47
3611.7----------259.48
3611.8-1----------259.49
3611.8-2----------259.50
3611.8-3----------259.51
3611.8-4----------259.52
3611.8-5----------259.53
3611.8-6----------259.54
3611.8-7----------259.55
3611.9----------259.56
3612.1----------259.57
3612.2----------259.59
3612.3----------259.58
3612.4----------259.60
3612.5----------259.61
3612.6----------259.62
3612.7----------259.63
3612.8----------259.64
3631.1----------185.37a
3631.2----------185.37b
3631.3----------185.37c
3631.4----------185.37d
3631.5----------185.37e
3632.0-3----------185.33a
3632.1----------185.33b
3632.2----------185.33c
3632.3----------185.33d
3632.4----------185.33e
3632.5----------185.33f
3632.6----------185.33g
3633.0-3----------185.33h
3633.1----------185.33i
3633.2----------185.33j
3633.3----------185.33k
3633.4----------185.331
3633.5----------185.33m
3633.6----------185.33n
3633.7----------185.33o
3634.1----------185.34
3635.0-3----------185.37
3636.1----------69.11
3637.1----------69.11(ft.nt.8)
3637.2----------75.35(f)
4110.0-2----------161.1(a)
4110.0-3(a)----------161.19
4110.0-5----------161.2
4111.1----------161.3
4111.2----------161.4
4111.3-1(a)----------161.5(a)
4111.3-1(b)----------161.5(b)
4111.3-1(c)----------161.1(b)
4111.3-1(d)(1)----------161.6(a)
4111.3-1(d)(2)----------161.6(b)(1)
4111.3-2(a)----------161.5(d)
4111.3-2(b)----------161.1(c)
4111.3-2(c)----------161.6(g)(1)
4111.3-2(d)----------161.6(h)
4111.4-1----------161.6(g)(2)
4111.4-2(a)to(e)----------161.6(f)
4111.4-2(f)----------161.5(e)
4112.2----------161.5(c)
4112.3----------161.11
4113.1----------161.12
4114.1-1----------161.13(a)
4114.1-2----------161.13(b)
4114.1-3----------161.13(c)
4114.1-4----------161.13(d)
4114.1-5----------161.13(e)
4114.2-1----------161.13(f)
4114.2-2----------161.13(h)
4114.3-1----------161.13(g)
4114.3-2----------161.13(h)
4114.4----------161.14
4115.2-1(a)to(d)----------161.9
4115.2-1(e)----------161.6(e)
4115.2-1(f)----------161.6(j)
4115.2-1(g)----------161.6(b)(2)
4115.2-1(h)----------161.6(c)
4115.2-1(i)----------161.6(d)
4115.2-1(j)----------161.6(i)
4115.2-1(k)----------161.8
4115.2-2----------161.7
4115.2-3----------161.10
4115.2-4----------161.16
4115.2-5a----------161.15
4115.2-5(b)----------161.17
4115.2-6----------161.18
4121.0-1----------115.129

4121.0-3----------115.128
4121.1----------115.130
4121.2----------115.131
4121.3----------115.132
4121.4----------115.133
4121.5----------115.134
4121.6----------115.135
4122.0-3----------160.1
4122.0-5----------160.2
4122.1-1----------160.4
4122.1-2----------160.3
4122.2-1----------160.5
4122.2-2----------160.5
4122.2-3----------160.6
4122.2-4----------160.9
4122.2-5----------160.10
4122.2-6----------160.7
4122.3-1(a)to(d)----------160.10(a),.55
4122.3-1(b)----------160.15
4122.3-1(c)----------160.16
4122.3-1(d)----------160.10
4122.3-1(e)----------160.21
4122.3-2----------160.8
4122.3-3----------160.14
4122.3-4----------160.21
4122.3-5----------160.12
4122.4-1----------160.17(a)
4122.4-2----------160.17(b)
4122.4-3----------160.17(c)
4122.4-4----------160.18
4122.5-1----------160.13
4122.5-2----------160.20
4122.5-3----------160.11
4122.5-4----------160.13
4122.5-5----------160.14
4122.5-6----------160.22
4122.6----------160.19
4122.7----------160.23
4122.8----------160.24
4131.0-2----------63.2
4131.0-3----------63.1
4131.0-5----------63.3
4131.1-1----------63.4
4131.1-2----------63.5
4131.1-3----------63.6
4131.1-4----------63.7
4131.2-1----------63.8
4131.2-2----------63.9
4131.2-3----------63.10
4131.2-4----------63.11
4131.2-5----------63.12
4131.2-6----------63.13
4131.2-7----------63.15 & .16 & .18 & .19
4131.2-8----------63.17
4131.2-9----------63.20 & 21
4131.3----------63.22(of revision Circular 2006)
4131.5-1----------63.14
4131.5-2----------63.24
4132.0-3----------63.31
4132.0-5----------63.32
4132.1-1----------63.34
4132.1-2----------63.36
4132.1-3----------63.38
4132.1-4----------63.37
4132.1-5----------63.49
4132.2-1----------63.33
4132.2-2----------63.35
4132.2-3----------63.39
4132.2-4----------63.40 & .41
4132.2-5----------63.42
4132.2-6----------63.43
4132.2-6----------63.46
4132.2-8----------63.44
4132.2-9----------63.45 & 47
4132.3----------63.48 & 50
4132.4----------63.51
4251.1----------163.1
4251.2----------163.2
4251.3----------163.3
4251.4----------163.4
4251.5----------163.5
4251.6----------163.6
4251.7----------163.7
4251.8----------163.8
4251.9----------163.9
5040.0-3----------115.2
5041----------115.3
5042.1----------115.4
5042.2----------115.5
5042.3----------115.6
5043.1----------115.7
5043.2----------115.8
5043.3----------115.9
5044.1----------115.10
5044.2----------115.11
5044.3----------115.12
5044.4----------115.13
5045.1----------115.14
5400.0-3(a)(1)----------285.1
5400.0-3(b)(2)----------79.33
5400.0-3(c)(1)----------284.23
5400.0-3(c)(2)----------284.42
5400.0-3(d)----------259.1(e) & (f)
5400.0-3(e)----------79.1
5400.0-5----------285.2 & 79.15(c) & 259.2
5401.1----------285.3
5402.1----------285.5
5409.1-1----------79.16
5409.1-2----------79.17
5409.1-3----------79.18
5409.1-4----------79.19
5409.1-5(a)----------79.20
5409.1-5(b)----------79.21
5409.1-5(c)----------79.22
5409.1-5(d)----------79.23
5409.1-5(e)----------79.24
5409.1-6----------79.25
5409.2-1----------79.34

5409.2-2----------79.35
5409.2-3----------79.36
5409.2-4----------79.37
5409.2-5----------79.38
5409.2-6----------79.39
5409.2-7----------79.40
5409.2-8----------79.41
5411.1----------285.6
5421.1----------285.7
5432.1----------285.4
5433.1----------285.8
5433.2----------285.9
5433.3----------285.10(a)-(d)
5433.4----------285.11
5435.1----------285.10(e)
5436.1----------285.12
5437.1----------285.13
5441.2----------285.14
5441.3----------285.15
5443.1----------285.16
5443.2----------285.17
5445.1----------285.18
5461.1-1(a)----------284.24
5461.1-1(b)----------284.25
5461.1-1(c)----------284.26
5461.1-1(d)----------284.27
5461.1-1(e)----------284.28
5461.1-1(f)(1)----------284.30
5461.1-1(f)(2)----------284.29
5461.1-1(f)(3)----------284.33
5461.1-1(g)(1)----------284.31
5461.1-1(g)(2)----------284.32
5461.1-2(a)----------284.36
5461.1-2(b)----------284.37
5461.1-2(c)----------284.38
5461.1-2(d)----------284.39
5461.1-3----------284.41
5461.1-4(a)(1)----------284.43
5461.1-4(a)(2)----------284.44
5461.1-4(a)(3)----------284.45
5461.1-4(a)(4)----------284.46
5461.1-4(b)----------284.47 & .48
5461.1-4(c)----------284.49
5461.1-4(d)----------284.50
5461.1-4(e)----------284.51
5461.1-4(f)----------284.52
5461.2-1----------79.2
5461.2-2----------79.3
5461.2-3(a)----------79.4
5461.2-3(b)----------79.5
5461.2-3(c)----------79.6
5461.2-3(d)----------79.7
5461.2-3(e)----------79.8
5461.2-3(f)----------79.10
5461.2-4----------79.9
5461.2-5----------79.11
5461.2-6----------79.12
5461.2-7----------79.14
5461.3-1----------259.20
5461.3-2(a)----------259.21
5461.3-2(b)----------259.22
5461.3-2(c)----------259.24
5461.3-3----------259.23
5461.3-4----------259.25
5461.3-5----------259.26
5461.3-6----------259.27
5461.3-7----------259.28
5461.3-8----------259.29
6232.1-1----------115.180
6232.1-2----------115.181
6232.1-3----------115.182
6232.1-4----------115.183
6232.1-5----------115.184
9180.0-2(a)----------78.4
9180.0-2(b)----------281.2
9180.0-3(a)----------280.1
9180.0-3(b)----------78.1
9180.0-3(b)(1)----------78.3
9180.0-3(c)(1)&(2)----------281.1&281.10
9180.1-1(a)----------78.2
9180.1-1(a)(1)----------78.6
9183.0-2(a)----------78.5
9185----------
9185.1-1(a)----------280.2
9185.1-1(b)----------280.5
9185.1-2(a)(1)----------281.3
9185.1-2(a)(2)----------281.11
9185.1-3----------280.3
9185.1-3(a)----------280.4
9185----------
9185.2-2(a)&(b)----------280.6
9185.2-2(c)----------280.7
9185.2-2(d)----------280.8
9185.2-2(e)----------280.9
9185.2-2(f)----------280.10
9185.3-1(a)----------281.4
9185.3-1(b)----------281.8
9185.3-1(c)----------281.9
9185.3-2(a)----------281.5
9185.3-2(b)----------281.7
9185.3-3----------281.6
9185.4-1----------281.16
9185.4-1(a)----------281.15
9185.4-2(a)----------281.13
9185.4-2(b)----------281.12
9185.4-3----------281.14
9239.0-3----------288(ft.nt.)
9239.0-7----------259.71
9239.0-8----------288.1
9239.0-9----------288.12
9239.1-1----------284.52
9239.1-2----------79.11
9239.1-3----------288.2
9239.2-1----------289.1
9239.2-2----------289.2
9239.2-3----------289.3
9239.2-4----------289.4
9239.2-5----------289.5
9239.3-1----------160.22
9239.3-2----------161.12
9239.3-3----------63.51
9239.5-1----------288.4
9239.5-2----------288.5
9239.5-3----------288.6,288.7, 288.8,288.10, 288.11
9239.6-1----------288.3
9239.7-1----------115.160

GPO 844-009

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2159]

PART 2240—SALES AND EXCHANGES

Subpart 2241—Alaska Public Sales Act

A new paragraph is added to § 2241.5–1, to read as follows:

§ 2241.5–1 Application; proof of use.

* * * * *

(c) Under authority of the Act of July 19, 1963 (48 U.S.C. 364f), the provisions of § 2011.1 of this chapter may be applied where the purchaser complies with the use requirements within three years of issuance of a certificate of purchase but submits proof of compliance more than three years after issuance of the certificate.

STEWART L. UDALL,
Secretary of the Interior.

SEPTEMBER 5, 1964.

[F.R. Doc. 64–9249; Filed, Sept. 11, 1964; 8:46 a.m.]

Published in 29 F.R. 12874, September 12, 1964 - Effective upon public

Circular Distribution List

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Saturday, September 12, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2159]

PART 2240—SALES AND EXCHANGES

Subpart 2241—Alaska Public Sales Act

The purpose of this amendment is to incorporate into the regulations the authority given to the Secretary of the Interior by the Act of July 19, 1963 (77 Stat. 80; 48 U.S.C. 364f) to apply the principles of equity and justice to sales under the Alaska Public Sales Act where purchaser submits proof of compliance with the use requirements of that law more than three years after issuance of a certificate of purchase.

These rules involve matters relating to public property and are not required by law to be published as proposed rule making. This Department, nevertheless, customarily gives such notice and public procedure thereon. However, that practice is deemed unnecessary in this instance because the amendment incorporates in the regulations a statement of statutory authority. Accordingly, these rules shall become effective upon the date of publication in the FEDERAL REGISTER.

A new paragraph is added to § 2241.5–1, to read as follows:

§ 2241.5–1 Application; proof of use.

* * * * *

(c) Under authority of the Act of July 19, 1963 (48 U.S.C. 364f), the provisions of § 2011.1 of this chapter may be applied where the purchaser complies with the use requirements within three years of issuance of a certificate of purchase but submits proof of compliance more than three years after issuance of the certificate.

STEWART L. UDALL,
Secretary of the Interior.

SEPTEMBER 5, 1964.

[F.R. Doc. 64–9249; Filed, Sept. 11, 1964; 8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2160]

PART 2220—GRANTS

Subpart 2225—Pittman Act

REVOCATION

The Act of October 22, 1919 (41 Stat. 293; 43 U.S.C. 351–355, 357–360), was repealed by the Act of August 11, 1964 (P.L. 88–417; 78 Stat. 389), subject to valid existing rights and obligations and without prejudice to the processing of valid applications for permit on file on that date. Accordingly, the regulations 43 CFR Subpart 2225, are hereby revoked effective on date of publication of this notice in the FEDERAL REGISTER, except as to any permit in existence or valid application for permit on file as of August 11, 1964.

JOHN A. CARVER, Jr.,
Acting Secretary of the Interior.

SEPTEMBER 22, 1964.

[F.R. Doc. 64–9757; Filed, Sept. 25, 1964; 8:46 a.m.]

Published in 29 F.R. 13387, September 26, 1964 - Effective upon publication.

Circular Distribution List

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CIRCULAR NO. 2161

2234.1-1 (a) – amended Circ 2167 2170
2234.7-1 – 2234.7-4 added by Circ 2167
2234.8-1 – 2234.8-2 " " Circ 2170

Regulations pertaining to

RIGHTS-OF-WAY on the PUBLIC LANDS

As contained in Title 43 of the Code of Federal Regulations

September 21, 1964

Subpart 2234—Rights-of-way

Sec.
2234.1 General regulations.
2234.1–1 Scope; definitions.
2234.1–2 Procedures.
2234.1–3 Nature of interest.
2234.1–4 Approval of right-of-way.
2234.1–5 Revocation or cancellation.
2234.1–6 Payment required; exceptions; default; revision of charges.
2234.2 For roads, railroads, station grounds, wagon roads and tramways.
2234.2–1 For railroads, wagon roads and tramways in Alaska.
2234.2–2 For railroads and station grounds outside of Alaska.
2234.2–3 For tramroads and logging roads.
2234.2–4 Under Title 23, United States Code.
2234.2–5 Over public lands under R. S. 2477.
2234.3 For canals, ditches and reservoirs.
2234.3–1 For irrigation (Act of March 3, 1891, as amended).
2234.3–2 For watering livestock (Act of January 13, 1897, as amended).
2234.4 For telephone and telegraph lines, transmission lines, radio and television sites, and water facilities.
2234.4–1 Under Act of February 5, 1901 and March 4, 1911.
2234.4–2 Boulder Canyon Project.
2234.5 For mineral leasing purposes.
2234.5–1 For oil and natural gas pipe lines and pumping plant sites under the Mineral Leasing Act.
2234.5–2 Over lands subject to mineral lease.
2234.5–3 For pipe lines on the Outer Continental Shelf (Act of August 7, 1953).
2234.6 Through national forests (Act of February 1, 1905).
2234.6–1 Authority.
2234.6–2 When construction may commence.
2234.6–3 Water plant structures.
2234.6–4 Procedure when unsurveyed land is involved.

§ 2234.1 General regulations.

AUTHORITY: The provisions of this Subpart 2234 issued under R.S. 161, 2478; 5 U.S.C. 22, 43 U.S.C. 2, 1201. Additional authority is cited to text in parentheses.

REFERENCE: See Appendix B following § 2234.6–4.

§ 2234.1–1 Scope; definitions.

(a) *Scope.* (1) This section applies to all rights-of-way covered by §§ 2234.1–1 to 2234.1–6; 2234.2–3(a); 2234.2–4; 2234.3–1; 2234.3–2; 2234.4–1; 2234.4–2; 2234.5–1; 2234.5–2; 2234.6.

(2) This does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L.D. 513), with the consent of the agency having jurisdiction or control over the land.

(3) All general right-of-way laws, and the regulations thereunder contained in this subpart, are applicable to Alaska. (See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U.S.C. 23), and 30 Op. Atty. Gen. 387 (1915.)

(b) *Definitions.* As used in this Subpart:

(1) "Secretary" means the Secretary of the Interior.

(2) "Director" means the Director, Bureau of Land Management.

(3) "State Director" means State Director of the Bureau of Land Management, or his authorized representative.

(4) "Manager" means manager of the land office for the district in which the lands applied for are situated. For areas for which there is no land office "manager" means the Director.

(5) "Project" means the physical structures in connection with which the right-of-way is approved.

(6) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

(7) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.

(8) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.

(9) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

§ 2234.1–2 Procedures.

(a) *Application.* (1) No special form of application is required. The application should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in accordance with the provisions of § 1821.2 of this Chapter. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

(2) All applications filed pursuant to this part in the name of individuals, corporations or associations must be accompanied by an application service fee of $10 except where the right of way will authorize use and occupancy of the lands exclusively for the purposes stated in § 2234.1–6(c). The service fee will not be returnable. No application service fee will be required of States or agencies or instrumentalities thereof or of Government agencies.

(b) *Showing as to organizations required of corporations.* (1) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(2) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(3) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(4) A copy of the resolution or bylaws of the corporation authorizing the filing of the application must also be filed.

(5) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

(c) *Showing as to citizenship required of individuals; showing by associations of individuals.* (1) An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(2) An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

(d) *Documents which must accompany application.* (1) *Maps.* Each application, other than a reservoir declaratory statement under § 2234.3–2(b)(1) must be accompanied by a map prepared on tracing linen and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(i) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kv. map scales may at option of the applicant be 5,280 feet to the inch.

(ii) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(iii) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(iv) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(v) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(vi) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(vii) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix B) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(viii) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(2) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

(e) *Indian lands.* The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 161.

§ 2234.1–3 Nature of interest.

(a) *Nature of interest granted; settlement on right-of-way; rights of ingress and egress.* (1) No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for

construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

(2) All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

(3) In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

(b) *Commencement of construction work in advance of approval of right-of-way; trespass.* (1) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies and to use and occupy such lands in advance of the approval of a right-of-way may be granted by the manager upon a satisfactory showing of the necessity for such action and upon a determination, after the request for permission has been cleared by all interested agencies of the Department, that such action is compatible with the public interest. Requests for such advance authority need not meet the formal requirements of § 2234.1–2 (a) to (c) and may be filed with the agency having supervision of the land involved, in which case a duplicate request must be filed in the office specified in § 2234.1–2 (a).

(2) Any grant of advance permission is solely for the convenience of the applicant and is not a commitment by the Department that a right-of-way will be approved. The Department's authority in acting on a right-of-way application is not restricted in any way by the grant of advance permission or any requirements laid down in such grant of permission and the Department may impose additional or different requirements, within the scope of the applicable statute and lawful regulations thereunder, as conditions precedent to the approval of the right-of-way. A grant of advance permission is revocable at will, and the grantee assumes all the risk of operating under such permission.

(3) Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

(c) *Terms and conditions.* An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(2) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(3) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(4) To do everything reasonably within his power, both independently and on

request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(5) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(6) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(7) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(8) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(9) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(10) That he shall at all times keep the manager informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(11) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(12) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(13) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

(d) *Proposed or existing national forest.* Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

(e) *National parks and monuments.* (1) The act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(2) Whenever a right-of-way is desired through any national park or monument for purposes other than those excepted by the act of March 3, 1921, or not otherwise expressly prohibited by law, the applicant must show to the satisfaction of the Director, National Park Service, that the location and use of the right-of-way for the purposes contemplated will not interfere with the uses and purposes for which the park or monument was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file such stipulations and bond as may be required by the Director, National Park Service. Ordinarily, such a right-of-way may be allowed only on a showing of absolute necessity.

(f) *Oregon and California Railroad and Coos Bay Wagon Road grant lands.* (1) All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was revested in the United States by the act of June 9, 1916 (39 Stat. 218), and reconveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the Bureau, in advance of construction, such sum of money as may be determined to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).

(2) The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

§ 2234.1–4 Approval of right-of-way.

(a) *Completed application and reports.* (1) Where an application is complete and in conformity with the law and regulations and all required reports have been obtained and it is determined that the approval of the right-of-way will not be contrary to the public interest, including that of the Government, the manager will approve the right-of-way.

(2) An application which does not conform with the law or regulations under which filed or the approval of which would be inconsistent with the public or Government interest, will be rejected.

(3) Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the manager is required to clear the application with such agency.

(b) *Use of right-of-way.* (1) *Proof of construction.* A period of 5 years from the date of the approval of the right-of-way is usually allowed for construction unless a different period is provided by statute. Upon completion of construction, proof thereof should be submitted to the manager, consisting of a statement and certificate furnished by the holder of the right-of-way. The statement and certificate are embodied in Forms 5 and 6, Appendix B, which should be modified so as to be appropriate to the act and to the nature of the project. If, in construction, a substantial deviation from the location shown on the original map is planned or made, the party in interest must file a duly executed relinquishment of the unused portion of the right-of-way accompanied by a map of amended location of the right-of-way for the project as actually constructed. The map of amended location must be prepared in accordance with § 2234.1–2(d)(1) and must be filed before or as soon as possible after the deviation is made. The relinquishment may be prepared so as to become effective upon approval of the amended location. Any deviation made prior to such approval will be at the risk of the applicant.

(2) *Nonconstruction, abandonment or nonuse.* Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 2234.1–5 Revocation or cancellation.

(a) *Order of cancellation.* All rights-of-way approved pursuant to this part, except those granted for pipelines pursuant to section 28 of the act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U.S.C. 185), shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of

the terms or conditions of the right-of-way. No right-of-way shall be deemed to be canceled except on the issuance of a specific order of cancellation.

(b) *Change in jurisdiction over or disposal of lands.* (1) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(2) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

(c) *Transfer of right-of-way.* (1) Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a right-of-way acquired under any of the acts, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in triplicate in accordance with § 2234.1–2(a) for approval; must be accompanied by the same showing of qualifications of the assignee as is required of applicants; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the right-of-way. No assignment will be recognized unless and until approved.

(2) All filings of transfers, by assignment, lease, operating agreement, or otherwise, made pursuant to this section, except by States or agencies or instrumentalities thereof, must be accompanied by an application service fee of $10 which will not be returnable.

(d) *Disposal of property on termination of right-of-way.* Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

§ 2234.1–6 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided,* That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in §§ 2234.2–4, 2234.2–5, 2234.3–1, and 2234.3–2.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way or easement. After default has occurred, no structures, buildings, or other equipment may be

removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

§ 2234.2 For roads, railroads, station grounds, wagon roads and tramways.

§ 2234.2–1 For railroads, wagon roads and tramways in Alaska.

(a) *General statement.* (1) The rights-of-way for railroads, wagon roads, and tramsways in the State of Alaska, granted by sections 2 to 9, inclusive, of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411–419) does not convey an estate in fee in the lands used for such purposes or in the lands used for station and terminal facilities. The grant is merely of a right of use for the necessary and legitimate purposes of the roads, the fee remaining in the United States, except as to lands authorized to be sold under section 6 by the Secretary of the Interior, "upon such expressed conditions as in his judgment may be necessary to protect the public interests." The nature of these conditions will depend upon the public necessities and will be governed by the particular circumstances of each case. These sections authorize the Secretary of the Interior to approve maps and plats affecting unsurveyed as well as surveyed land, and while it is not obligatory on the part of grantees to file additional maps and plats after survey of the lands, showing connections with the public surveys, and the smallest legal subdivisions of all lands affected, by so doing the grants and the extent thereof could be properly recorded on the records of the Bureau of Land Management and readily determined.

(2) All persons entering public lands, to part of which a right-of-way has attached, take the same subject to such right-of-way, the latter being computed as a part of the area of the tract entered.

(3) Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnations of the right-of-way across the same may be made in accordance with the provisions of section 4 of the said act of May 14, 1898.

(b) *Applications by individuals, associations or corporations*—(1) *Incorporated companies.* (i) Any incorporated company desiring to obtain the benefits of this part is required to file the following papers and maps:

(*a*) A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State where organized.

(*b*) A copy of the State law under which the company was organized, with the certificate of the governor or secretary of the State that the same is the existing law.

(*c*) When said law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

(*d*) A certificate from the Secretary of the State of Alaska showing that the Company has complied with the State law.

(*e*) The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory where organized. (Form 1, Appendix C).

(*f*) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, Appendix C).

(*g*) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the Bureau of Land Management by the governor or secretary of any State, a company organized in such State or Territory may file, in lieu of the requirements of subdivision *b* of this paragraph, a certificate of the governor or Secretary of the State that

no change has been made since a given date, not later than that of the laws last forwarded.

(*h*) Maps, field notes, and other papers as hereinafter required.

(ii) No forms are prescribed for the proofs required in subdivision (1) (*a*)–(*d*) as each case must be governed to some extent by the laws of the State.

(iii) For forms 1 to 8, inclusive, referred to under this section, see Appendix C of this subchapter.

(2) *Individuals or associations of individuals.* Individuals or associations of individuals making applications for permits, under section 6 of the act (30 Stat. 411; 48 U.S.C. 416), for tramways or wagon roads are required to file evidence of citizenship. In the case of associations a statement must be filed by the principal officer thereof, giving a list of its members and stating that the list includes all the members. Evidence of citizenship must be furnished for each member of the association. Individuals and associations will also be required to file the maps, field notes, and other papers hereinafter required.

(c) *Maps and plats*—(1) *Preparation of maps and plats.* All maps and plats must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey thereof, wherever such surveys have been made. The word "profile" as used in the act is understood to intend a map of alignment. No profile of grades will be required.

(2) *Data required on maps.* (i) The maps should show any other road crossed or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map should be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. Station numbers should also be given on the map in all cases where changes of numbering occur and where known lines of survey, public or otherwise, are crossed, with distance to the nearest permanent monument or other mark on such line. The map must also show the lines of reference of initial, terminal, and intermediate points, with their courses and distances.

(ii) When the lines are located on surveyed land, the maps must show the 40-acre subdivisions; when on unsurveyed land, a meridian should be drawn on maps through initial and terminal points and at intervals of not more than 6 miles, intermediate points.

(d) *Application requirements*—(1) *Data required in field notes; instructions as to surveys.* Typewritten field notes, with clear carbon copies, are preferred, as they expedite the examination of applications. All monuments and other marks with which connections are made should be fully described, so that they may be easily found. The field notes must be so complete that the line may be retraced on the ground. On account of the conditions existing in Alaska surveys based wholly on the magnetic needle will not be accepted. In that case a true meridian should be established, as accurately as possible, at the initial point. It should be permanently marked and fully described. The survey should be based thereon and checked by a meridian similarly fixed at the terminal point and, when the line is a long one, by intermediate meridians at proper intervals. On account of the rapid convergence of the meridians in these latitudes such intermediate meridians should be established at such intervals as to avoid large discrepancies in bearings. It will probably be found preferable to run by transit deflections from a permanently established line, with frequent and readily recoverable reference lines permanently marked; and in such surveys occasional true bearings should be stated, at least approximately. On all lines of railroad the 10-mile sections should be indicated and numbered, and on maps of tramways and wagon roads the 5-mile sections shall likewise be indicated and numbered.

(2) *Filing of papers.* The maps, field notes, and accompanying papers should be filed in the land office for the district where the proposed right of way is located.

(3) *Connections with other surveys.* Connections should be made with other surveys, public or private, whenever possible; also with mineral monuments and other known and established marks. When a sufficient number of such points are not available to make such connections at least every 6 miles, the surveyor must make connection with natural objects or permanent monuments.

(4) *Permanent monuments or marks.* Along the line of survey, at least once in every mile, permanent and easily recoverable monuments or marks must be set and connected therewith, in such positions that the construction of the road will not interfere with them. The locations thereof must be indicated on the maps. All reference points must be fully described in the field notes, so that they may be relocated, and the exact point used for reference indicated.

(5) *Designation of termini.* The termini of a line of road should be fixed by reference of course and distance to a permanent monument or other definite mark. The initial point of the survey and of station, terminal, and junction grounds should be similarly referred. The maps, field notes, engineer's certificate, and applicant's certificate (Forms 3 and 4, Appendix C), should each show these connections.

(6) *Statement and certificates required.* The engineer's certificate and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding subparagraph) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4, Appendix C.) Station, terminal, or junction grounds must be described by initial point (as in the preceding subparagraph) and area in acres (Forms 7 and 8, Appendix C) when they are located on surveyed land, and the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. When the applicant is an individual the word "applicant" should be used instead of "company," and such other changes made as are necessary on this account.

(7) *Additional width for right-of-way.* Where additional width is desired for railroad right-of-way on account of heavy cuts or fills, the additional right-of-way desired should be stated, the reason therefor fully shown, the limits of the additional right-of-way exactly designated, and any other information furnished that may be necessary to enable the manager to consider the case before giving it his approval.

(8) *Preliminary map and field notes.* The preliminary map authorized by the proviso of section 4 of the act will not be required to comply so strictly with the foregoing instructions as maps of definite location; but it is to be observed that they must be based upon an actual survey, and that the more fully they comply with § 2234.2–1 the better they will serve their object, which is to indicate the lands to be crossed by the final line and to preserve the company's prior right until the approval of its maps of definite location. Unless the preliminary map and field notes are such that the line of survey can be retraced from them on the ground, they will be valueless for the purpose of preserving the company's rights. The preliminary map and field notes should be in duplicate, and should be filed in the land office in order that proper notations may be made on the records as notice to intending settlers and subsequent applicants for the right of way.

(9) *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a scale of 1,000 feet to an inch when necessary, or, in extreme cases, to 500 feet to an inch. No other scales must be used and should be so selected as to avoid making maps inconveniently large for handling. In most cases, by furnishing separate field notes, an increase of scale can be avoided. Plats of station, terminal, and junction grounds, etc., should be drawn on a scale of 500 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

(10) *Plats of station, terminal, and junction grounds.* Plats of station, terminal, and junction grounds must be prepared in accordance with the direction for maps of lines of routes. Whenever they are located on or near navigable waters the shore line must be shown, and also the boundaries of any other railroad grounds or other claims located

on or near navigable waters within a distance of 80 rods from any point of the tract applied for.

(11) *Showing required in application.* (i) All applications for permits made under section 6 of the act should state whether it is proposed to collect toll on the proposed wagon road or tramway; and, in case of wagon roads, the application must be accompanied by satisfactory evidence, corroborated by a statement, tending to show that the public convenience requires the construction of the proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. In all cases, if the proposed line of road shall be located over any road or trail in common use for public travel, a satisfactory statement, corroborated by statement, must be submitted with the application, showing that the interests of the public will not be injuriously affected thereby.

(ii) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(e) *Evidence of construction*—(1) *Statement and certificates required when road is constructed.* When the road is constructed a certificate of the engineer and a certificate of the applicant (Forms 5 and 6, Appendix C) should be filed in the proper land office in duplicate. In case of deviations from the map previously approved, whether before or after construction, there must be filed new maps and field notes in full, as in this part provided, bearing proper forms, changed to agree with the facts in the case, and the location must be described in the forms as the amended survey and the amended definite location. In such cases, the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

(2) *Action where required evidence is not filed.* Unless the proper evidence of construction is filed within the time prescribed by the act for the construction of each section of the road, appropriate steps will be taken looking to the cancellation of the approval of the right of way and the notations thereof on the records.

(f) *Charges for transportation of passengers and freight.* (1) In the case of a wagon road or tramway built under permit issued under section 6 of the act upon which it is proposed to collect toll, a printed schedule of the rates for freight and passengers should also be filed with the manager for his consideration and approval at least 60 days before the road is to be opened to traffic, in order to allow a sufficient time for consideration, inasmuch as by section 6 it is made a misdemeanor to collect toll without written authority from the Secretary of the Interior. In the case of a wagon road satisfactory evidence, corroborated, must be submitted with said schedule, showing that at least an average of $500 per mile has been actually expended in constructing such road. These schedules must be submitted in duplicate, one copy of which, bearing the approval of the manager, will be returned to the applicant if found satisfactory. Said schedules shall be plainly printed in large type.

(2) Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

(R.S. 2478; 43 U.S.C. 1201)

§ 2234.2–2 For railroads and station grounds outside of Alaska.

(a) *Authority.* The act approved March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939) grants rights-of-way to railroad companies through the public lands of the United States, for railroad and station ground purposes, and the act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525) authorizes the Secretary of the Interior to approve surveys and plats of such rights-of-way "over and across any forest reservation or reservoir site when in his judgment the public interest would not be injuriously affected thereby."

(b) *Nature of grant.* A railroad company to which a right-of-way is granted does not secure a full and complete title to the land on which the right-of-way is located. It obtains only the right to use the land for the purposes for which it is granted and for no other purpose, and may hold such possession if it is necessary to that use, as long and only as long as that use continues. The Government conveys the fee simple title in the land over which the right-of-way is granted to the person to whom patent issues for

the legal subdivision on which the right-of-way is located, and such patentee takes the fee subject only to the railroad company's right of use and possession. All persons settling on a tract of public land, to part of which right-of-way has attached, take the same subject to such right-of-way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right-of-way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of the Department of the Interior.

(c) *Location*—(1) *National forest.* When a right-of-way is located within a national forest the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest.

(2) *Proposed national forest; construction through forests.* (i) When a right-of-way is located within a proposed national forest the applicant must file such stipulation and execute such bond as may be required for the protection of such proposed forest.

(ii) No construction will be allowed in a national forest or a proposed national forest until an application for right-of-way has been regularly filed in accordance with the laws of the United States and has been approved, or has been considered by the Department of the Interior, and permission for such construction has been specifically given.

(iii) All rights-of-way applications for railroads and station grounds within national forests must be accompanied by a service fee of $10 which will not be returnable.

(3) *Private lands and possessory claims.* Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnation of the right-of-way across the same may be made in accordance with the provisions of section 3 of the act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 936), or the right can be purchased as provided by section 2288 of the Revised Statutes, as amended by section 3 of the act of March 3, 1891 (26 Stat. 1097; 43 U.S.C. 174).

(d) *Material to be filed.* (1) Any railroad company desiring to obtain the benefits of the law is required to file with the manager of the land office for the district in which the principal terminus of the road is to be located:

(i) A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(ii) A citation of the law of the State or Territory under which the company was organized, and any amendments thereof.

(iii) If the law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territory officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(iv) When a company is operating in a State other than the State or Territory in which it is incorporated it must submit the certificate of the proper officer of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(v) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated. (Form 1, Appendix A.)

(vi) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, Appendix A.)

(2) No forms are prescribed for the proofs required in subparagraph (1) (i)-(iv) of this paragraph, as each case must be governed to some extent by the laws of the State or Territory.

(e) *Maps*—(1) *Maps of alignment.* (i) The word profile as used in this act is understood to intend a map of alignment. All such maps and plats of station grounds are required by the act to be filed with the manager of the land office for the district where the right-of-way is located; but if the right-of-way is

located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. The maps must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey of the line of route or of the station grounds.

(ii) The maps should show any other road crossed, or with which connection is made, and whenever possible the station number on the survey therof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map would thereby be too much crowded to be easily read, then duplicate field notes should be filed separate from the map. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. In all cases station numbers should be given on the map where changes of numbering occur and where the lines of the public surveys are crossed, with distances to the nearest existing corner. The map must also show the lines of reference of initial and terminal points, with their courses and distances.

(2) *Field notes.* Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were run on true or magnetic bearings, and if run on magnetic bearings the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public-survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

(3) *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to the inch ordinarily, but when absolutely necessary the scale may be increased to 1,000 feet to the inch. These scales are fixed so that maps may be readily handled and filed. In most cases, by furnishing separate field notes an increase of scale may be avoided. Plats of station grounds should be drawn on a scale of 500 feet to the inch, and must be filed separately from the map of the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

(4) *Public-land subdivisions.* All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and all lands affected by the right-of-way the smallest legal subdivisions (40-acre tracts and lots) must be shown.

(5) *Termini of road.* The termini of the line of road should be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, field notes, engineer's statement, and president's certificate (Forms 3 and 4, Appendix A), should each show these connections. The company must certify in Form 4 that the road is to be operated as a common carrier of passengers and freight. A tract for station grounds must be similarly referenced and described on the plat and in Forms 7 and 8 (Appendix A), except when the tract conforms to the subdivisions of the public survey, in which case it may be described in the forms according to the subdivisions.

(6) *Connections on unsurveyed lands.* When either terminal of the line of route is upon unsurveyed land it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant and the single bearing and distance from the terminal point to the corner must be computed and noted on the map in the engineer's statement, and in the president's certificate (Forms 3 and 4, Appendix A). The notes and all data for the computation of the traverse must be given.

(7) *Connections with monuments on unsurveyed land.* When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. There must be given an accurate description of the mark and full data of the traverse, as required above. The engineer's statement and president's

certificate (Forms 3 and 4, Appendix A), must state the connections. These monuments are of great importance.

(8) *Surveyed and unsurveyed land.* (i) When the line of route lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately stated in Forms 3 and 4 (Appendix A) by connection of termini and length, as though each portion were independent.

(ii) When lands desired for station grounds lie partly on unsurveyed land, the areas of the several parts on surveyed and unsurveyed land must be separately stated on the map and in Forms 7 and 8 (Appendix A).

(iii) Lines of route or station grounds lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to the regulations in this part, but the approval will only relate to that portion traversing the surveyed lands.

(9) *Unsurveyed land.* Maps of lines of route or plats of station grounds lying wholly on unsurveyed lands may be received and placed on file in the land office of the district in which the same is situated, for general information, and the date of filing will be noted thereon; but the same will not be approved as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps or plats will not dispense with the filing of maps or plats after the survey of the lands and within the time limited in the act granting the right-of-way. If these maps or plats are in all respects regular when filed, they will receive approval. In filing such maps or plats the initial and terminal points will be fixed as indicated in paragraph (e) (6) and (7) of this section.

(10) *Connections with public survey corners.* Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.

(11) *Statement and certificate required.* The engineer's statement and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made. (See Forms 3 and 4, Appendix A.) Station grounds must be described by initial point and area in acres (see Forms 7 and 8, Appendix A), and when they are on surveyed land the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein.

(12) *Spurs or branch lines.* Where right-of-way is desired for spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer branch lines separate maps should be filed.

(13) *Notations on maps and records.* When maps are filed, the manager will note on each the name of the land office and the date of filing, over his written signature. Notations will also be made on the records of the land office, as to each unpatented tract affected, that application for right-of-way is pending, giving date of filing and name of applicant. The manager will certify on each map, over his written signature, that unpatented land is affected by the proposed right-of-way. The maps and field notes will be approved by the manager in duplicate. Any valid right existing at the date of the filing of the right-of-way application will not be affected by the filing or approval thereof. If no unpatented land is involved in the application the manager will reject it, allowing the usual right of appeal.

(f) *Evidence of construction.* When the railroad is constructed, a statement of the engineer and certificate of the president (Forms 5 and 6, Appendix A) must be filed in the land office, in duplicate. No new map will be required, except in case of deviations from the right-of-way previously approved, whether before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended, or bear a statement describing them, and the location must be described in

the forms as the amended survey and the amended definite location. In such cases the company must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

(R.S. 2478; 43 U.S.C. 1201)

§ 2234.2–3 For tramroads and logging roads.

(a) *Over public lands generally*—(1) *Authority.* (i) The act of January 21, 1895 (28 Stat. 635; 43 U.S.C. 956), authorizes the Secretary under such general regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525; 43 U.S.C. 665, 958). Where the authorized officer determines it to be in the public interest, he will require applicants under this section to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under paragraph b of this section with appropriate modifications to meet local conditions: *Provided,* That where the land over which the right-of-way is requested under the jurisdiction of an agency other than the Bureau of Land Management, such requirement shall be made only with the concurrence of the authorized officer of such agency. The authorized officer may require an applicant for or holder of a tramroad right-of-way to execute a bond on a form provided by the Director, modified to refer to the applicable sections of this part, in an amount, not less than $500 per mile or fraction thereof, to be determined by the authorized officer conditioned on compliance with §§ 2234.1–1 to 2234.1–5 and subparagraph (1) and (2) of this paragraph. The arbitration procedures involved in the stipulations shall be in accordance with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

(ii) In the opinion of July 16, 1942 (68 T.D. 29), the Solicitor of the Department of the Interior held that the act of February 15, 1901, (31 Stat. 790; 43 U.S.C. 959), superseded the part of the 1895 act authorizing rights-of-way for canals and reservoirs.

(2) *Tramroads defined; special provisions for temporary rights-of-way.* (i) Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

(ii) An application pursuant to subparagraph (1) of this paragraph and this section for a temporary right-of-way to be used for a period of not more than six months may be filed with the officer in charge of any local office of the Bureau of Land Management having jurisdiction over the lands. No special form for such an application is required but it should state whether the applicant or applicants are citizens of the United States and if a corporation, whether it is qualified under State law to acquire the right-of-way applied for and be accompanied by three copies of a map or sketch which shows the location of the right-of-way with a degree of accuracy sufficient for its position on the ground in relation to the lines and corners of the public land surveys or in relation to some prominent topographic feature, to be readily determined. Such a map or sketch or statement as to citizenship or qualification may be accepted as the basis for a permit for a temporary right-of-way even though it does not meet the requirements of other regulations in this part, if in the opinion of the authorized officer it would be in the public interest to do so. Within the discretion of the issuing officer, the holder of a temporary permit may be granted a single extension of the permit for a period of not more than six months. Notwithstanding the provisions of § 2234.1–6 the charge for use and occupancy of public lands for such temporary rights-of-way shall be at the rate of 50 cents per mile or fraction thereof per month or fraction thereof, with a minimum rental charge of $5 per right-of-way: *Provided,* That no rental

charge shall be made for the use and occupancy of public lands for such temporary rights-of-way to be used for the purpose of removing mine or quarry products, timber, or timber products which have been acquired from the United States under contract or permit.

(b) *Over O. and C. and Coos Bay revested lands*—(1) *Authority.* (i) The act of January 21, 1895 (28 Stat. 635, 43 U.S.C. 956) authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, or quarrying or of cutting timber and manufacturing timber. The act of January 21, 1895, is made applicable to the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(ii) The act of August 28, 1937 (50 Stat. 874) provides for the conservation and management of the O. and C. lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

(2) *Statement of policy.* (i) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(ii) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(iii) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(iv) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees (*a*) rights-of-way across lands controlled directly or indirectly by him; (*b*) the right to use, to the extent indicated in subparagraphs (8) and (9) of this paragraph, any portions of the road system or rights-or-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect; (*c*) the right to extend such road system across the operator's lands to reach federal roads or timber; and (*d*) in addition, in the limited circumstances set forth in subparagraph (7) (ii) of this paragraph the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as

may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(v) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with subparagraphs (10) to (14) of this paragraph.

(vi) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under paragraph (b) without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(vii) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(viii) The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be

revocable by the district forester, the State Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with subparagraph (7) (i) and (iv) of this paragraph to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(ix) The authorized officer may, in his discretion, issue to private operators rights-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in subparagraphs (8) and (9) of this paragraph any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

(3) *Definitions.* Except as the context may otherwise indicate, as the terms are used in this paragraph:

(i) "Bureau" means Bureau of Land Management.

(ii) "Timber of the United States" or "federal timber" means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(iii) "State Director" means the State Director, Area 1, Bureau of Land Management, or his authorized representative.

(iv) "State Director" means the State Director, Bureau of Land Management, or his authorized representative.

(v) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(vi) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(vii) "District Forester" means a District Forester of the Bureau who is stationed in the O. and C. area.

(viii) "Tramroads" include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(ix) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(x) "Licensee" of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(xi) "Direct control" of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with this paragraph.

(xii) "Indirect control" of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(*a*) A principal, disclosed or undisclosed, of the applicant; or

(*b*) A beneficiary of any trust or estate administered or established by the applicant; or

(*c*) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(*d*) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(*e*) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

(4) *Nature of permit.* (i) Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of subparagraphs (19) and (23) of this paragraph such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to subparagraph (21) of this paragraph.

(ii) A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in subparagraphs (11), (13) and (14) of this paragraph.

(5) *Construction in advance of permit.* The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with subparagraphs (6) (i), (ii), (7) and (15) of this paragraph.

(6) *Applications*—(i) *Filing.* (*a*) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form approved by the Director and filed in the office of the appropriate district forester. Application forms will be furnished upon request.

(*b*) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the

appropriate district forester prior to the time the permit applied for has been issued to, and accepted by, the applicant.

(ii) *Contents.* (*a*) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 1811 of this chapter.

(*b*) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(*c*) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile. Showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms as approved by the Director.

(*d*) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(*e*) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of subparagraph (3) (xi) of this paragraph, the portions thereof which the applicant indirectly controls within the meaning of subparagraph (3) (xii) of this paragraph, and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

(iii) *Trespass.* The mere filing of an application under this paragraph does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the authorized officer and delivered to the applicant. Any unauthorized use of O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Where there has been such a trespass, no permit shall be issued to the alleged trespasser unless (*a*) the trespass claim is fully satisfied; or (*b*) the alleged trespasser files a bond conditioned upon payment of the amount of damages found by the State supervisor, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or (*c*) the State Director finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability or as to the extent of his liability and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States.

CROSS REFERENCE: For disposal of timber or material to a trespasser, see § 9239.0–9 of this chapter.

(7) *Right-of-way and road use agreement; recordation.* (i) Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in subparagraph (2) of this paragraph, he may require the applicant, as a condition precedent to the issuance of the permit:

(*a*) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(*b*) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

(ii) In addition to the private road systems and rights-of-way described in subdivision (i) of this subparagraph, in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

(iii) Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subparagraph (2) of this paragraph he may issue a permit without requesting the applicant to grant any rights to the United States under this subparagraph.

(iv) Any grant of rights to the United States under this section shall be executed or approved by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit

evidence of such recordation to the appropriate district forester.

(8) *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by subparagraphs (10) and (13) of this paragraph.

(9) *Duration and location of rights granted or received by the United States.* The rights-of-way granted by the United States under any permit issued under subparagraph (18) of this paragraph, subject to the provisions of subparagraph (21) of this paragraph, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

(10) *Permittee's agreement with United States respecting compensation and adjustment of road use.* (i) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital cost; provisions for road maintenance; the use in addition to the uses set forth in subparagraph (8) of this paragraph which the United States and its licensees may make of the road system involved, a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the

filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(ii) The provisions of subparagraphs (11) to (14) of this paragraph shall not be applicable to any matters embraced in an agreement made pursuant to this section.

(11) *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (i) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under subparagraph (10) of this paragraph, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by subparagraph (14) of this paragraph. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

(ii) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by subparagraph (8) of this paragraph. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(iii) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(iv) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

(12) *Compensation payable by United States to permittee for use of road.* In

the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under subparagraph (10) of this paragraph covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cause made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

(13) *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (i) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under subparagraph (10) of this paragraph covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(ii) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by subparagraph (14) of this paragraph.

(iii) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

(14) *Arbitration procedure.* (i) Within ten days after the delivery of a written request for arbitration under subparagraphs (11) or (13) of this paragraph each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon

for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(ii) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both subparagraphs (11) and (13) of this paragraph.

(iii) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in subparagraphs (11) and (13) of this paragraph for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the appropriate district director or the State Director, either personally or by registered mail.

(iv) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matter as may appear relevant to the arbitrators.

(15) *Payment required for O. and C. timber.* An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

(16) *Payment to the United States for road use.* (i) A permittee shall pay a basic fee of five dollars per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for five years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than five years, the basic fee for each five-year period or for the remainder of the last period, if less than five years, must be paid in advance at five-year intervals: *Provided, however,* That in those cases where the permittee has executed under subparagraph (7) of this paragraph an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under paragraph (b) of this section.

(ii) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. Where such road is subject to recreational and other authorized uses, an allowance, representing a reasonable allocation for such uses, shall be deducted from the replacement costs of the road before the amortization item is computed. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under § 2234.2–3(b): *Provided*

further, That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and subparagraph (11) (ii) of this paragraph, as may be applicable.

(iii) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with subdivision (ii) of this subparagraph except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however*, That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with subparagraph (7) of this paragraph to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

(17) *Bond in connection with existing roads.* An applicant for a permit to use an existing Government road which is under the administrative jurisdiction of the Bureau for timber hauling purposes other than for federal timber acquired under a free-use permit, will be required, for the protection of such existing road, to execute a bond on a form approved by the Director in an amount to be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with this paragraph and the terms and conditions of the permit.

(18) *Approval of permit.* (i) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form approved by the Director.

(ii) The authorized officer may waive the requirements of subparagraphs (6) (ii) (*c*), (*e*) and (17) of this paragraph in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

(19) *Terms and conditions of permit.* (i) As to all permits: Every permittee shall agree:

(*a*) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under subparagraph (17) of this paragraph with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations, the permittee shall unreasonably withhold his assent, the authorized officer shall refer, the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer and, if the permittee nevertheless unreasonably withholds

such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(*b*) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the district forester and making payment therefor.

(*c*) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(*d*) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to subparagraphs (11), (13), and (14) of this paragraph.

(*e*) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under subparagraph (7) of this paragraph to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(*f*) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(*g*) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under this paragraph to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(*h*) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(*i*) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use; *Provided, however,* That the road and all usable road improvements shall be left in place.

(*j*) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under subparagraph (7) of this paragraph.

(*k*) To grant to the United States, upon request of an authorized officer, in lieu of the rights-of-way across legal subdivisions granted pursuant to subparagraph (7) of this paragraph, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with subparagraph (12) of this paragraph. The authorized officer shall waive the requirement under this subparagraph,

however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(ii) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(*a*) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(*b*) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

(20) *Assignment of permit.* Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the appropriate district forester for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by subparagraph (6) (ii) and (7) of this paragraph; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

(21) *Causes for termination of permittee's rights.* (i) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(*a*) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(*b*) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(ii) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, will the permittee shall fail to comply with any of the problems of said regulations or make defaults in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(iii) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(iv) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to subparagraphs (11), (13) and (14) of this paragraph.

(22) *Remedies for violations by licensee.* (i) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(ii) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his

belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to subparagraph (24) of this paragraph and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

(23) *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

(24) *Appeals.* An appeal pursuant to Parts 1840 and 1850 of this chapter, may be taken from any final decision of the authorized officer, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

(28 Stat. 635, as amended, sec. 11, 39 Stat. 223, sec. 6, 40 Stat. 1181, sec. 5, 50 Stat. 875; 43 U.S.C. 956, 1181c)

§ 2234.2–4 Under Title 23, United States Code.

(a) *Authority.* (1) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, the Secretary of Commerce may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Commerce in this connection.

(2) Title 23, United States Code, section 317, provides that:

(i) If the Secretary of Commerce determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Commerce shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(ii) (*a*) If within a period of four months after such filing the Secretary of such Department shall not have certified to the Secretary of Commerce that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.

(*b*) By decision of the Secretary, Nevada Department of Highways, A.24161, September 1945, it was held that the law imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

(iii) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Commerce and such lands or materials shall

immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

(b) *Application; grants.* (1)(a) Except where an application involves lands wholly within an Indian reservation, applications for rights-of-way and material sites under Title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, with the maps required by subparagraph (1) of § 2234.1–2(d) shall be filed by the appropriate State highway department in the manner prescribed by § 2234.1–2(a). Applications for lands wholly within an Indian reservation shall be filed in the Office of the superintendent of the Bureau of Indian Affairs agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

(b) When the lands involved are under the jurisdiction of the Department of the Interior an applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the Bureau or Office having jurisdiction over the lands to ascertain whether or not the use of appropriation of the lands for right-of-way purposes is consistent with the management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

(2) The appropriate state highway department will forward a copy of each application and map filed with the Department of the Interior to the authorized officer of the Bureau of Public Roads for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

(3) After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, United States Code, the authorized officer of the Bureau of Land Management will notify the applicant and the authorized officer of the Bureau of Public Roads either (i) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (ii) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

(4) Grants of rights-of-way under Title 23, United States Code, by the authorized officer of the Bureau of Land Management will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (i) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, United States Code, and (ii) any conditions which he deems necessary. Grants of highway rights-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the Bureau of Land Management deems appropriate.

(c) *Additional rights-of-way within highway rights-of-way.* (1) No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (i) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (ii) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation or (iii) where

the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 2234.1–3(c), in connection with the construction and maintenance of such facilities.

(2) Except as modified by subparagraph (1) of this paragraph, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

(5 U.S.C. 22; 43 U.S.C. 2, 1201, 1371)

§ 2234.2–5 Over public lands under R.S. 2477.

(a) *Authority.* R.S. 2477 (43 U.S.C. 932), grants rights-of-way for the construction of highways over public lands, not reserved for public uses.

(b) *Effective date and extent of grant.* (1) Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. Rights-of-way granted by R.S. 2477 do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of such highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted by R.S. 2477 except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under § 2234.4–1, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under § 2234.5–1 inclusive, for pipe line facilities subject to this exception.

(2) Holders of grants under R.S. 2477 shall be subject to the terms and conditions of § 2234.1–3(c) (2), (3), (4), (5), (9), (11). Where the holder of the highway consents to the construction of usual highway facilities, as provided above, such holder shall be responsible for compliance with the designated subparagraphs of § 2234.1–3(c) in connection with the construction and maintenance of such facilities.

(c) *Procedure when reserved land is involved; rights-of-way over revested and reconveyed lands.* (1) When a right-of-way is desired for the construction of a highway under R.S. 2477 over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, and when a right-of-way is desired for the construction of a highway under R.S. 2477 over the Revested and Reconveyed Lands, an application should be made in accordance with § 2234.1–2(a). Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected.

(2) Where reserved lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application, unless and until the reservation shall have been revoked or modified so as to permit construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve.

(3) Where Revested and Reconveyed Lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application unless and until the authorized officer of the Bureau of Land Management shall grant permission to construct the highway, subject to such terms and conditions as he deems necessary for the adequate protection and utilization of the lands, and for the maintenance of the objectives of the act

of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a).

(R.S. 453; 43 U.S.C. 1201)

§ 2234.3 For canals, ditches and reservoirs.

§ 2234.3–1 For irrigation (Act of March 3, 1891, as amended).

(a) *Authority*—(1) *Provisions of basic act.* (i) Section 18 of the act of March 3, 1891 (26 Stat. 1101), as amended by the acts of March 4, 1917 (39 Stat. 1197), and May 28, 1926 (44 Stat. 668; 43 U.S.C. 946) authorizes the Secretary to grant rights-of-way for irrigation and drainage purposes over public lands and reservations to the extent of the ground occupied by the water of any reservoirs and any canals and laterals and 50 feet on each side of the marginal limits thereof and such additional right-of-way as may be deemed necessary for the proper operation and maintenance of said reservoirs, canals, and laterals.

(ii) Section 19 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 947), provides that a map of the canal or ditch and reservoir must be filed within twelve months after the location of ten miles of a canal if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States; that upon the approval thereof by the Secretary, the same shall be noted upon the record and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

(iii) Section 20 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 948), provides that this act shall apply to all canals, ditches, or reservoirs theretofore or thereafter constructed, whether by corporations, individuals, or association of individuals, on the filing of the certificates and maps as therein provided; that if any section of the project is not completed within 5 years after location, the right-of-way shall be forfeited as to the uncompleted canal, ditch, or reservoir, to the extent that the same is not completed at the date of forfeiture.

(iv) Section 21 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 949), provides that nothing in this act shall authorize the occupancy of such right-of-way except for the purpose for which it was approved, and then only so far as may be necessary for the construction, maintenance, and care of the project.

(v) The act of March 3, 1891, as amended, is applicable to rights-of-way for pipelines, flumes, or other conduits, although they are not specifically mentioned in the act, if water is conveyed primarily for irrigation or drainage puposes.

(vi) Material on adjacent lands: The word "adjacent", as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L.D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L.D. 566). These decisions were rendered under the Railroad Right-of-Way Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934), and are applied to the act of March 3, 1891, since the wording with respect to the use of material is the same.

(2) *Use subsidiary to main purpose of irrigation.* Section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U.S.C. 951), authorizes the use of rights-of-way approved under the act of March 3, 1891, for purposes subsidiary to the main purpose of irrigation.

(3) *Caretaker's building sites.* The act of March 1, 1921 (41 Stat. 1194; 43 U.S.C. 950), authorizes the Secretary, except as to lands within national forests, to grant permits or easements for not to exceed 5 acres of ground adjoining the right-of-way at each of the locations, to be determined by the Secretary, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by the act of March 3, 1891, as amended.

(4) *Showing required for additional right-of-way.* The act of May 28, 1926, (44 Stat. 668; 43 U.S.C. 946), amended section 18 of the act of March 3, 1891, so as to authorize, if needed, a right-of-way additional to the 50 feet allowed by the section for operation and maintenance of reservoirs, canals, ditches, and laterals. To obtain such additional right-of-way, an explanatory showing must accompany the application. This should consist of a statement by the applicant's engineer or surveyor setting

forth succinctly the extent of the additional right-of-way required and the necessity therefor. The additional right-of-way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right-of-way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

(b) *Procedure when unsurveyed land is involved.* (1) Maps filed under the said act, as amended, showing canals, ditches, laterals, and reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps conform to these regulations, but the approval will only relate to that portion of the right-of-way traversing the surveyed land.

(2) Maps showing canals, ditches, laterals, and reservoirs lying wholly on unsurveyed lands may be received and placed on file in the Bureau of Land Management for general information. The date of filing will be noted thereon; but the maps will not be approved as the act makes no provision for the approval of any but maps showing locations on surveyed lands. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified in the act, and if the maps are regular in all respects they will receive the manager's approval.

(3) By letter of August 21, 1937, approved by the Department in the case of the Twin Lakes Reservoir and Canal Company (Denver 045465), it was held that a right-of-way may be acquired under the 1891 act, by actual construction of a project in advance of the filing of an application and approval of the right-of-way over unsurveyed lands, upon the same principle applied to railroads under the act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939).

(c) *Segregated reservoir sites.* The act of February 26, 1897 (29 Stat. 599; 43 U.S.C. 664), permits the approval of applications under the act of March 3, 1891, for rights-of-way upon reservoir sites reserved under authority of the act of October 2, 1888 (25 Stat. 526; 43 U.S.C. 662), and August 30, 1890 (26 Stat. 371, 391; 43 U.S.C. 662).

(R.S. 161, 453 U.S.C. 1201)

§ 2234.3–2 For watering livestock (Act of January 13, 1897, as amended).

(a) *Authority.* (1) By the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), it is provided that any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding 160 acres, so long as such reservoir is maintained and water kept therein for such purpose. The act does not apply to lands in grazing districts, and applications for stock-watering reservoirs on such lands should be filed under section 4 of the Taylor Grazing Act (48 Stat. 1271; 43 U.S.C. sec. 315c) and Part 4110 of this chapter.

(2) Section 1 of the act of January 13, 1897, as amended by the act of March 3, 1923 (42 Stat. 1437; 43 U.S.C. 952), authorizes the Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, to grant permission to fence reservoirs constructed under the act of January 13, 1897, in order to protect livestock, to conserve water, and to preserve its quality and conditions, provided, that such reservoir shall be kept open to the free use of any persons desiring to water animals of any kind.

(b) *Declaratory statement*—(1) *Form of application.* To apply for a reservoir site under this section, the applicant must file with the manager a declaratory statement drawn in accordance with Form 7, Appendix B together with a nonrefundable application service fee of $10. No other application is necessary.

(2) *Action on declaratory statements; size, location, and number of reservoir sites.* In acting upon these statements the following general rules will be applied:

(i) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity, not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000

gallons capacity, not more than 80 acres can be reserved. For reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity, not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more, 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, and troughs, the regulations requiring a minimum capacity of 250,000 gallons may be waived upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs and facilities to properly accommodate all cattle likely to water at the place in question.

(ii) Not more than 160 acres shall be reserved for this purpose in any section.

(iii) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(iv) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(v) Lands so reserved shall be kept open to the free use of any person desiring to water animals of any kind. If the lands so reserved are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(vi) Notwithstanding his action in accepting any such declaratory statement, the manager will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

(c) *Time for construction.* The reservoir must be constructed and completed within 2 years after the filing of the declaratory statement; otherwise the right-of-way will be subject to cancellation.

(d) *Map of constructed reservoir.* After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped showing its location with relation to the public land surveys. The map must be prepared in accordance with the requirements of § 2234.1–2(d) and be filed with the manager and must bear Forms 8 and 9, Appendix B.

(e) *Approval of constructed project—*(1) *Adjudication and notation of records.* The map and papers will be examined to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory, they will be approved, and the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. When such reservation is made the manager will make the proper notations on his records.

(2) *Annual proof of maintenance.* In order that this reservation shall be continued, it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required, during the month of January of each year to file with the manager a statement to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 10 Appendix B will be used for this statement. Upon failure to file such statement, steps will be taken looking to the revocation of the reservation of the lands.

(f) *Procedure when unsurveyed land is involved.* (1) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bear when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary. (See paragraph (d) of this section.)

(2) Any reservation made pursuant to the act of January 13, 1897, secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and this section shall be preserved and established by subsequent public-land surveys and approved plats thereof. Therefore, when the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the line of the official survey showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions or aliquot parts of subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(3) An annual statement of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in this section shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

(g) *Application to fence reservoir; plat required.* Any person, company, or corporation desiring to secure the benefits of the act of March 3, 1923, should file in accordance with § 2234.1–2(a), an application, duly corroborated by at least two disinterested witnesses, setting forth such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and conditions. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind, and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range. There shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

(29 Stat. 484, 42 Stat. 1437; 43 U.S.C. 952–955)

§ 2234.4 For telephone and telegraph lines, transmission lines, radio and television sites, and water facilities.

§ 2234.4–1 (Under Acts of February 15, 1901 and March 4, 1911).

(a) *Statutory authority.* (1) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(2) The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines

for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(3) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D.C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

(4) The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

(b) *Procedures*—(1) *Applications for lands in national forests and other reservations.* (i) Applications under the act of February 15, 1901, for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 2234.1–2(a). (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(ii) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof. (See 29 Op. Atty. Gen. 303.)

(2) *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (i) All applications where it is sought to acquire a right-of-way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), and section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U.S.C. 951), must be submitted under the 1891 and 1898 acts, in accordance with the applicable regulations in this part.

(ii) An application may be filed under the act of February 15, 1901, for a stock-watering reservoir site. Rights-of-way will not be approved for stock-watering reservoirs on wildlife refuges. An application under the act for a "water plant" site or for a pipeline right-of-way may include an area for a well to supply the water; but if, because the lands affected are within a grazing district established under the Taylor Grazing Act of June 28, 1934 (43 Stat. 1269; 43 U.S.C. 315 et seq.), as amended, or for any other reason, the granting of a right-of-way for a stock-watering reservoir site, or for a water plant site or for a pipeline would adversely affect the interest of the Government, the application therefor will not be allowed. If the lands affected are within a grazing district, an application for a stock-watering reservoir or water well site should be filed under section 4 of said act of June 28, 1934, if the applicant is qualified under the section and if the reservoir or well is necessary to the care and management of the permitted livestock and primarily for that purpose. Regulations under the said section 4 are contained in § 4115.2–5(a) of this chapter.

(iii) Applications for rights-of-way for telephone, telegraph, and power transmission lines may also be submitted under either the act of February 15, 1901, or the act of March 4, 1911, in accordance with the applicable regulations contained

in this part. Applications for radio, television and other forms of communication transmitting, relay and receiving structures and facilities should be submitted under the act of March 4, 1911, as amended.

(iv) Any application under the act of March 4, 1911 for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(3) *Plant sites; buildings to be platted on maps.* (i) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

(ii) If the application is for a powerplant site it must also contain a statement giving a description of the proposed powerplant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the powerplant is to be interconnected with other generating facilities owned by the applicant or others; and whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes.

(4) *Transmission lines.* When an application is made for a right-of-way for a transmission line, it must also contain the following:

(i) A description of the plant or connecting generating plants which generate or will generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(ii) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

(iii) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(iv) If the line is to have a nominal voltage of 33 kilovolts or over, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(c) *Terms and conditions.* By accepting a right-of-way for a power

transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 2234.1–3(c).

(1) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact, and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(2) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to on compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 33 kilovolts or more must, in addition to the requirements of § 2234.1–2(e), execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy. Utilization by the Department of surplus or increased capacity shall be

subject to the following terms and conditions:

(*a*) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of elecrtic power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(*b*) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(*c*) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(*d*) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(*e*) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(*f*) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(*g*) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(*h*) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy, the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(*i*) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(*j*) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(*k*) As used in this section, the term "transmission facility" includes (*a*) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (*b*) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(*l*) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(6) Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through the public lands and reservations must be filed and approved before any rights can be claimed thereunder.

(7) Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

(8) Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner canceled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 2234.1–2(a), a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

(31 Stat. 790, 36 Stat. 1253; 43 U.S.C. 959, 961)

§ 2234.4–2 Boulder Canyon Project.

Section 5(d) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617d), authorizes the use by any agency receiving a contract for the purchase of electrical energy from Boulder Canyon Project of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

(R.S. 2478; 43 U.S.C. 1201)

§ 2234.5 For mineral leasing purposes.

§ 2234.5–1 For oil and natural gas pipe lines and pumping plant sites under the Mineral Leasing Act.

(a) *Authority.* (1) Section 28 of the act of February 25, 1920 (41 Stat. 449), as amended by the acts of August 21, 1935 and August 12, 1953 (49 Stat. 678; 67 Stat. 557; 30 U.S.C. 185), authorizes the Secretary to grant rights-of-way through public lands, including the forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of the act (41 Stat. 437; 30 U.S.C. 22, 48, 181) to the extent of the ground occupied by the said pipeline and 25 feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by him, and upon the express conditions that such pipeline, if for oil, or for natural gas and yet excepted from the common carrier provisions of section 28 of the act of February 25, 1930, as amended, as stated in subparagraph (2) of this paragraph shall be constructed, operated, and maintained as a common carrier and that every pipeline holder shall accept, convey, transport, or purchase without

discrimination oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amount as the Secretary of the Interior may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.

(2) The amendatory act of August 12, 1953, cited in subparagraph (1) of this paragraph provides that the common carrier provisions of section 28 of the act of February 25, 1920, shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (52 Stat. 821; 15 U.S.C. 717w) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(3) By opinion of the Attorney General of January 3, 1941 (40 Op. Atty. Gen. 9), and departmental decision, Chiles P. Plummer, A–23988, February 24, 1945, this statute was construed as not applying to purchase or acquired lands as they are not considered public lands within the meaning of the act.

(b) *Common carrier stipulation.* Each application for a pipeline right-of-way, if for oil, or for natural gas and the pipeline has not been excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in paragraph (a)(2) of this section, must include the following stipulation:

> The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

(c) *Use of pipeline.* The applicant shall state in the application the specific use, within the purview of the act, to which the pipeline is to be put, and any approval of the right-of-way shall be limited to such use, unless otherwise stated in the approval. No change in the use of the pipeline from that authorized by the approval of the right-of-way shall be allowed except as follows:

(1) In the case of pipelines engaged in interstate transportation, a change may be made only with approval first obtained from the authorized officer, and upon such terms and conditions as he may prescribe as a prerequisite to the approval of the change of use. If the authorized officer does not disapprove or otherwise act upon an application for a change in use by the end of the forty-fifth day after the application is filed, he shall be deemed to have approved it without conditions other than those previously existing.

(2) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of pipeline for the transportation of products with the purview of the act, from that specified in the approval of the right-of-way, provided, written notice of such change is filed with the manager not less than 15 days in advance of the actual change of use. Such notice must be accompanied by a showing as to whether the change in use is to be temporary or permanent, and a statement that such change will not result in any hardship or injustice to persons operating under Federal leases who may be dependent on the pipeline as the means of transportation of their products to existing markets, and must be accompanied by the consent in writing of such lessees to the change of use.

(d) *Approval of right-of-way.* The approval of such right-of-way shall be subject to the express conditions that the use of the pipeline for the transportation of oil, gas, or other similar products, shall be limited to such products produced in conformity with State and Federal laws, including laws prohibiting waste.

(e) *Pumping plant site.* A site for a pumping station or other structures reasonably necessary to the operation of a pipeline on a right-of-way approved under section 28 of the act of February 25, 1920, or as amended by the act of August 21, 1935, may be granted under the same sections (36 Op. Atty. Gen. 480). When an application is made for a right-of-way for a site, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection

with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act.

(Sec. 28, 49 Stat. 678, as amended; 30 U.S.C. 185)

§ 2234.5–2 Over lands subject to mineral lease.

(a) *Authority; applications.* (1) Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U.S.C. 186), provides in part:

(i) That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(ii) Where another statutory provision covers the type of right-of-way desired, applications shall be made in accordance with such statute and the applicable regulations.

(iii) Where there is no other statutory provision covering the type of right-of-way desired, applications shall be filed in accordance with §§ 2234.1–1 to 2234.1–6 inclusive.

(Sec. 32, 41 Stat. 450, R.S. 2478; 30 U.S.C. 189, 43 U.S.C. 1201)

§ 2234.5–3 For pipe lines on the Outer Continental Shelf (Act of August 7, 1953).

(a) *Purpose and authority.* (1) Section 5(c) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 464), authorizes the Secretary of the Interior to grant rights-of-way for pipeline purposes for the transportation of oil and gas. The purpose of the regulations in this part is to set forth the rules governing the granting and administration of such rights-of-way. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands or to rights-of-way thereon are applicable to the submerged lands of the Outer Continental Shelf.

(2) Compliance with the regulations of this part does not obviate the necessity of compliance with requirements and regulations of the Department of the Army and the Coast Guard with respect to prevention of obstruction to navigation, lights, and warning devices, and other matters relating to safety of life and property, as authorized by section 4 of the act.

(b) *Definitions.* (1) "Secretary" means Secretary of the Interior.

(2) "Director" means Director, Bureau of Land Management.

(3) "Manager" means the officer in charge of the local office of the Bureau of Land Management.

(4) "Right-of-way" includes the site on which the pipe line and associated structures are situated which shall not exceed 200 feet in width for pipe lines and be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage, or treating of the production from a lease or leases. The construction of gathering lines may be approved by the Oil and Gas Supervisor in accordance with the provisions of 30 CFR 250.18 and 250.68.

(c) *Procedures*—(1) *Application*—(i) *Form and requirements.* No special form of application is required. The application should be filed in duplicate and should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the act and these regulations and that applicant agrees that the right-of-way if approved will be subject to the terms and conditions of the regulations in this part. It should also state the

primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the office of the Manager. If the right-of-way has been utilized prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date applicant obtained control of the improvements. A filing fee of $10 and the rental required herein under subparagraph (4)(v) of this paragraph, must accompany the application.

(ii) *Map showing survey.* Each copy of the application must be accompanied by a map , showing the center line of the right-of-way, properly identified so that the right-of-way may be accurately located by a competent engineer. The map should comply with the following requirements:

(*a*) The scale shall be at least 1:160,000.

(*b*) Courses and distances of the center line of the right-of-way shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(*c*) The total distance and width of the right-of-way shall be given, and the diameter of the pipe line specified.

(*d*) The initial and terminal points of the right-of-way shall be accurately located by latitude and longitude or by grid references.

(*e*) Each copy of the map shall bear upon its face a statement of the engineer who made the map that the right-of-way is accurately represented upon the map.

(2) *Persons qualified to acquire and hold rights-of-way.* (i) Applications may be filed by citizens of the United States, associations of such citizens, and by corporations organized under the laws of the United States or of any State or Territory thereof.

(ii) An individual and each member of an association applying for a right-of-way must state in the application whether he is a native-born or naturalized citizen of the United States.

(iii) (*a*) A private corporation must file a certified copy of its charter or articles of incorporation.

(*b*) A corporation other than a private one must file a copy of the law under which it was organized and proof of its organization..

(*c*) A copy of the resolution or by-laws of the corporation authorizing the filing of the application or a certificate of the Secretary or an assistant Secretary of the corporation under the corporate seal certifying that the officer executing the application has authority to do so, must be filed. If the application is filed by an attorney-in-fact a certified copy of the resolution of the Board of Directors authorizing his appointment and an executed copy of the power of attorney must be filed.

(*d*) If the corporation has previously filed any or all of the papers required in (*a*), (*b*), and (*c*) of this subdivision, specific reference to such filing giving date, place, and case number will be accepted as full compliance with such requirements.

(3) *Consent of or notice to lessee or right-of-way holder of area crossed or invaded by right-of-way.* An applicant must show the extent to which the right-of-way applied for invades or crosses mineral leases or rights-of-way other than his own and must submit with his application either the written consent of each lessee or right-of-way holder whose lease or right-of-way is so affected or a statement that he has delivered to each lessee or right-of-way holder whose lease or right-of-way is so affected personally or by registered or certified mail a copy of the application and map. If the statement is filed no final action will be taken on the right-of-way application until 15 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to file protests against granting of the right-of-way.

(4) *Terms and conditions.* An applicant by accepting a right-of-way grant, agrees and consents to comply with and be bound by the following terms and conditions, accepting those which the Secretary may waive in a particular case:

(i) To comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf and the protection of correlative rights therein.

(ii) To pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and to indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way.

(iii) To keep the Director informed at all times of his address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision in all subcontracts.

(iv) That the allowance of the right-of-way shall be subject to the express condition that the rights granted will not prevent or interfere in any way with the management, administration of, or the granting either prior or subsequent to the right-of-way grant of other rights by the United States in the submerged lands affected thereby, and that he agrees and consents to the occupancy and use by the United States or its lessees or other right-of-way holders of any part of the right-of-way not actually occupied or necessarily incident to its use for any necessary operations involved in such management, administration or the enjoyment of such other granted rights.

(v) To pay for the first calendar year or fraction thereof, and thereafter annually in advance an annual rental of $5 for each mile or fraction thereof traversed by the right-of-way and $50 for each area applied for as the site for a pumping station or other accessory to the right-of-way. Payments required herein may be annual, for a 5-year period or for multiples of such period.

(vi) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Manager, he shall, so far as reasonably possible, restore the area of the right-of-way to its original condition.

(d) *Approval of right-of-way.* If the application and other required information are found to be in compliance with the law and regulations and the consents required by paragraph (c) (3) of this section have been obtained or any protests filed as therein provided have been rejected, the right-of-way will be granted. If the right-of-way as applied for would cross any area withdrawn from disposal or restricted from exploration and operation it will be rejected unless the Federal agency in charge of withdrawn or restricted area shall give its consent to the granting of the right-of-way, but in such case the applicant upon request filed within 30 days after receipt of the rejection notice will be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(e) *Term of grant.* Any right-of-way granted hereunder shall be for so long as the pipe line is maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Cessation of use temporarily shall not terminate the grant, but if the purpose of the grant ceases to exist or use of the pipe line is permanently discontinued for any reason the grant shall be subject to forfeiture.

(f) *Construction*—(1) *Proof of construction.* Failure to construct the pipe line within 5 years from the date of the grant shall be deemed to be an abandonment of the grant which will be forfeited by an appropriate proceeding. Proof of construction shall be submitted to the Manager. Such proof shall consist of a statement by the holder of the right-of-way that the pipe line has been laid and is in operation. If there is any deviation from the right-of-way as shown on the original map, the unused portion of the grant must be relinquished and maps in duplicate of the location of the right-of-way as constructed, prepared in accordance with paragraph (c) (1) of this section must be furnished as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat will be at the risk of the right-of-way holder.

(2) *Advance permission to commence construction.* Upon a satisfactory showing of the need therefor, the Director may grant permission to commence construction of a pipe line in advance of any grant of the right-of-way but such permission is not a commitment that the right-of-way will be approved and all

work done thereunder prior to the granting of the right-of-way will be at the applicant's risk. No advance permission will be granted for an area or areas not subject to a right-of-way grant.

(g) *Assignment of right-of-way.* Assignment may be made of a right-of-way in whole or as to any lineal segment thereof after construction subject to the approval of the Manager. Any such assignment must be filed in duplicate accompanied by an application for approval in which the assignee must make the showing required by paragraph (c) (2) of this section and agree to the terms and conditions prescribed in paragraph (c) (4) of this section. No assignment shall be effective to transfer any rights until it is approved. A fee of $10 must accompany the application for the approval of an assignment.

(h) *Penalty for failure to comply.* As provided in the act, failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the application therefor and the survey, location and width thereof and upon the express condition that such oil or gas pipe lines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipe line in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things conservation and the prevention of waste, be grounds for forfeiture of the grant in an appropriate, judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 4(b) of the act. Upon relinquishment of any right-of-way or forfeiture of the grant, the right-of-way owner will be required to remove his improvements within one year from the effective date of such relinquishment or forfeiture unless otherwise provided by law or in the decree of forfeiture.

(Sec. 5, 67 Stat. 464; 43 U.S.C. 1334)

§ 2234.6 Through national forests (Act of February 1, 1905).

§ 2234.6–1 Authority.

Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 524), grants rights-of-way through national forests to citizens and corporations of the United States, for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2234.6–2 When construction may commence.

No construction will be allowed in national forests until an application for right-of-way has been regularly filed in accordance with §§ 2234.4–1 to 2234.1–5 and this § 2234.6 and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

(Dec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2234.6–3 Water plant structures.

When application is made for a right-of-way for water plants, § 2234.4–1(b) (3) should be followed, with appropriate changes in the prescribed forms.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2234.6–4 Procedure when unsurveyed land is involved.

Maps showing reservoirs, canals, water plants, and other structures wholly upon unsurveyed lands, will be received and acted upon in the manner prescribed for surveyed lands.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

APPENDIX A

FORMS FOR DUE PROOFS, AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY]

---------- *of the*
(---------- *Company*)

(Form 2)

STATE OF ----------
County of ----------, *ss:*

I, ---------- do certify that I am the president of the ---------- company, and that the following is a true list of the officers of the said company, with the full name and official designation of such, to wit: (here insert the full name and official designation of each officer.)

[SEAL OF COMPANY]

(*President of Company*)

(Form 3)

STATE OF ----------
County of ----------, *ss:*

---------- ----------, Being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the ---------- company; that the survey of the said company's line of railroad described as follows: (here describe the line of route as required by section 10), a length of ---------- miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority, commencing on the ---------- day of ----------, 19--, and ending on the ---------- day of ----------, 19--; and that the survey of the said line is accurately represented on this map and by the accompanying field notes.

Sworn and subscribed to before me this ------ day of ---------- 19--.

[SEAL] ---
(*Notary Public*)

(Form 4)

I, ----------, do hereby certify that I am president of the ---------- company; that ----------, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said railroad, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the -------- day of --------, 19--, as the definite location of the said railroad described as follows: (describe as in Form 3); and that this map has been prepared to be filed in order to obtain the benefits of the act of Congress approved March 8, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States." I further certify that the said railroad is to be operated as a common carrier of passengers and freight.

(*President of the* -------
Company)

Attest:
[SEAL OF COMPANY]

(*Secretary*)

(Form 5)

STATE OF ----------,
County of ----------, *ss:*

----------, being duly sworn, says that he is the chief engineer of (or was employed to construct) the railroad of the ---------- company; that said railroad has been constructed under his supervision as follows: (describe as in section 10), a total length of -- miles; that construction was commenced on the ---------- day of ----------, 19--, and completed on the ---------- day of ----------, 19--; and that the constructed railroad conforms to the map and field notes which received the approval of the Secretary of the Interior on the ---------- day of ----------, 19--.

Sworn and subscribed to before me this ---------- day of ----------, 19--.

[SEAL] ---
(*Notary Public*)

(Form 6)

I, ----------, do hereby certify that I am the president of the ---------- company; that the railroad described as follows: (describe as in Form 5) was actually constructed as set forth in the accompanying affidavit of ----------, chief engineer (or the person employed by the company in the premises); that the location of the constructed railroad conforms to the map and field notes approved by the Secretary of the Interior on the ---------- day of ----------, 19--; and that the company has in all things complied with the requirements of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

(*President of the* -------
Company)

Attest:
[SEAL OF COMPANY] ---
(*Secretary*)

(Form 7)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by section 10) an area of __ acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19—; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the __ mile to the __ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL] _____
(*Notary Public*)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of __ acres, and no more, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for station grounds; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the _____ mile to the _____ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

[SEAL OF COMPANY]
Attest:

_____
(*President of the _____ Company*)

_____
(*Secretary*)

APPENDIX B

Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act invoked, and to the nature of the project.

FORM

Reference should be made to the appropriate section of the regulations to determine when each of the forms is required.

Forms Nos. 2, 4, 6, 7, 9, and 10 may be signed by any officer or employee of the company who is authorized to sign them. However, if they are executed by a person other than the President, they must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See § 1813.2–2.

ENGINEER'S STATEMENT

(Form 1)

_____ states he is by
(Name of engineer)
occupation a _____ employed by the _____ to
(Type of engineer) (Company)
make the survey of the _____,
(Kind of works)
as described and shown on this map; that the survey of said works was made by him (or under his supervision) and under authority, commencing on the _____ day of _____ 19 _____, and ending on the _____ day of _____ 19__; and that such survey is accurately represented upon this map.

_____
(Engineer)

APPLICANT'S CERTIFICATE

(Form 2)

This is to certify that _____
(Engineer)
who subscribed the statement hereon is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map is filed as a part of the complete application, and in order that

the applicant may obtain the benefits of ----------; and I further certify that the
(Cite statute)
right-of-way herein described is desired for ----------.
(State purpose)

[SEAL] ----------
(Signature of applicant)

(Title)

(Company)

Attest:

FORMS FOR PLANT SITES ONLY

See §§ 2234.4–1(b)(3) and 2234.5–1(e).

(Form 3)

---------- states that
(Name of engineer)
he is the chief engineer of (or the person employed by) the ----------,
(Company)
under whose supervision the survey was made of the grounds selected by the company for structures for a plant site under the act of Congress approved February 15, 1901 (February 1, 1905, act of March 4, 1911, as amended, or act of February 25, 1920, as amended), said grounds (here describe as required by regulation, sec. 244.31); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said Act.

(Signature of engineer)

(Form 4)

I, ----------, do hereby certify
(Applicant) (Company officer)
that I am the ---------- of the ----------
(Title)
----------; that the survey of the struc-
(Company)
tures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of ----------, its chief engineer (or person employed in the premises), whose statement precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here described as required by regulation, sec. 244.30), for plant site under the act of Congress approved February 15, 1901 (February 1, 1905, March 4, 1911, as amended, or February 25, 1920, as amended); and that the company, by resolution of its board of directors, passed on the ---------- day of ---------- 19----, directed the proper officers to present the said drawing for approval in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act.

[SEAL] ----------
(Signature of applicant)

(Title)

(Company)

Attest:

FORMS FOR PROOF OF CONSTRUCTION

See section 244.15.

(Form 5)

---------- states that he is
(Name of engineer)
the chief engineer (or was employed to supervise or check the construction of the canals, ditches, laterals, and reservoirs) for the ----------; that said (canals,
(Company)
ditches, laterals, and reservoirs) have been constructed under his supervision; that construction was commenced on the ------ day of ---------- 19----, and completed on the ------ day of ---------- 19----; that the constructed (canals, ditches, laterals, and reservoirs) as aforesaid, conform to the map which received the approval of the Department of the Interior on the -------- day of ---------- 19----.

(Signature of engineer)

(Form 6)

I, ---------- certify
(Applicant) (Company officer)
that I am the ------ of the ----------;
(Title) (Company)
that the (canals, ditches, laterals, and reservoirs) were actually constructed as set forth in the accompanying statement of --------, chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map approved by the Department of the Interior on the ------ day of ---------- 19----; and that the company has in all things complied with the requirements of the act of (March 3, 1891) granting rights-of-way for (canals, ditches, laterals, and reservoirs) through public lands of the United States.

[SEAL] ----------
(Signature of applicant)

(Title)

(Company)

Attest:

FORMS FOR RESERVOIR DECLARATORY STATEMENT

(Form 7)

See § 2234.3–2(b) (1).
Res. D. S.
No. _____

Land Office at _____,
_____ 19__.

I, _____,
(Applicant) (Company officer)
of _____,
(Post office address)
do hereby certify that I am _____
(Title)
of the _____, and on behalf of
(Company)
said company, and under its authority, do hereby apply for the reservation of land in _____ county, State of _____, for the construction and use of a reservoir for furnishing water for livestock under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952). The location of said reservoir and of the land necessary for its use, is as follows: _____[1] of section _____ in township _____ of range _____ M., containing _____ acres.

To the best of my knowledge and belief the said land is not occupied or otherwise claimed, and is not mineral or otherwise reserved. The said reservoir is to be used in connection with_____.[2]
(Business of applicant)

The land owned or claimed by the applicant within the vicinity (within 3 miles) of the said reservoir is as follows:

_____
_____
(Describe by legal subdivision, section, township, and range)

No part of the land to be reserved under this application is or will be fenced unless written permission is first obtained from the Department of the Interior; the same will be kept open to the free use of any person desiring to water animals of any kind; the land will not be used for any purpose except the watering of stock; and the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

The water of said reservoir will cover an area of _____ acres in _____ of section _____ in township _____, of range _____ of said lands; the capacity of the reservoir will be _____ gallons, and the dam will be _____ feet high. The source of the water for said reservoir is _____
(Type and location
_____, and there are
of spring, stream, runoff, etc.)
no streams or springs within 2 miles of the land to be reserved except as follows:
_____
(Insert names or other identification)

The applicant has filed no other declaratory statements under this act, except as follows:

No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.

Total, _____ acres, of which Nos. _____ _____ are located in said county.

It is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____
Land Office at _____

I, _____, manager of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

Fees, $_____ paid.

_____
(Manager)

(Form 8)

See § 2234.3–2(d).

_____ says that he is the
(Chief engineer)
person who was employed to make the survey of a reservoir covering an area of _____ acres, the initial point of the survey being _____, said
(Described as required by § 2234.3–2(d))
reservoir having been constructed upon the _____[1] of section _____, township _____, range _____ M., as proposed by

---

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

[2] Statement of business should include full information concerning the extent to which applicant is engaged in grazing, breeding, driving, or transporting livestock; the number and kinds of such stock; the place where they are being breed or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

reservoir declaratory statement No. _____, which was filed in the local land office at _____ (City), under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952), that the said survey was made on the _____ day of _____ 19____, that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of _____ gallons of water.

_____
(Signature of engineer)

(Form 9)

See § 2234.3–2(d).

I, _____ (Applicant) (Company officer), do hereby certify that I am the _____ (Title) of the _____ (Company) which filed (or that I am the person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the proposed reservoir has been constructed upon the _____[1] of section _____ township _____, range ____ M., covering an area of _____ acres; that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purposes and in the manner prescribed by the said act of January, provisions of which have been and will be complied with in all respects.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

(Form 10)

See § 2234.3–2(e)(2).

_____ (Applicant) (Company officer) says that he is the _____ (Title) of the _____ (Company) which filed (or that he is the person who filed) reservoir declaratory statement No. _____ in the local land office at _____ (City); that the reservoir constructed in pursuance thereof, as heretofore certified has been kept in repair; that water has been kept therein to the extent of not less than _____ gallons during the entire calendar year of 19____; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said year; and that the said company (or person) has in all respects complied with the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952).

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

APPENDIX C

FORMS FOR DUE PROOFS AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS, TRAMWAYS, WAGON ROADS, ETC.

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior under the act of May 14, 1898 (30 Stat. 409), is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY] _____
(_____ of the _____ Company)

(Form 2)

STATE OF _____,
County of _____, *ss:*

I, _____, do certify that I am the president of the _____ Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each to wit: (Here insert the full name and official designation of each officer).

[SEAL OF COMPANY] _____
(President of Company)

(Form 3)

STATE OF _____
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said company's line of (railroad, tramway, or wagon road) described as follows: (Here describe the line of route as required by paragraph

12), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said land is accurately represented on this map and by the accompanying field notes; and that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map. (In the case of a tramway or wagon road, add the following: The said line of road does not lie upon nor cross any road or trail in common use for public travel except as shown on this map.)

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL] _____

(Notary Public)

(Form 4)

I, _____ do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (railroad, tramway, or wagon road), as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (railroad, tramway, or wagon road) upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the _____ day of _____, 19__, as the definite location of the said (railroad, tramway, or wagon road) described as follows: (Describe as in Form 3); that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map, and that this map has been prepared to be filed in order to obtain the benefits of sections 2 to 9, inclusive, of the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."[2] I further certify that the said (railroad or tramway) is to be used as a common carrier of freight and passengers.

_____

(President of the _____ Company)

_____

(Secretary)

ATTEST:

[SEAL OF COMPANY]

[2] The last sentence to be omitted from applications for wagon-road right of way.

(Form 5)

STATE OF _____,

County of _____, ss:

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct the railroad, tramway, or wagon road of) the _____ company; that said (railroad, tramway, or wagon road) has been constructed under his supervision, as follows: (describe as in paragraph 12) a total length of _____ miles; that construction was commenced on the _____ day of _____, 19__, and completed on the _____ day of _____, 19__; that the constructed (railroad, tramway, or wagon road) conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19__.

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL] _____

(Notary Public)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company, that the (railroad, tramway, or wagon road) described as follows: (describe as in Form 5), was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the process); that the location of the constructed (railroad, tramway, or wagon road) conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19__, and that the company has in all things complied with the requirements of sections 2 to 9, inclusive of the act of Congress approved May 24, 1808, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."

_____

(President of the _____ Company)

_____

(Secretary)

Attest:

[SEAL OF COMPANY]

(Form 7)

STATE OF _____,

County of _____, ss:

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by paragraph 12) an area of _____ acres, and no more, was made by him (or under his direction) as chief engineer of the com-

pany (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ mile to the _____ mile, for which this selection is made);[b] that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map, and that to the best of my knowledge and belief there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL] _____

(Notary Public)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of _____ acres, and no more, was made by him as chief engineer of (or as surveyor employed to make the survey by) the said company; that the said survey, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for (station, terminal, or junction grounds);[b] (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ miles to the _____ mile, for which this selection is made); that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map; and that, to the best of my knowledge and belief, there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____

(*President of the _____ Company*)

Attest:

[SEAL OF COMPANY] _____

(*Secretary*)

[b] This clause is to be omitted in applications for terminal or junction grounds.

This circular supersedes Circulars 1750, 1751, 1806, 1854, 1855, 1915, 1936, 1946, 1954, 1974, 2004, 2012, 2033, 2069, 2084, 2100, 2104, and 2106. Also superseded are those portions of 2001 relating to Parts 243 & 244, portions of 2085 relating to Part 244, and portions of 1949 relating to Part 74.

GPO 845 - 339

Repl. by 2308

CIRCULAR NO. 2162

Regulations pertaining to

TOWNSITES on the PUBLIC LANDS

As contained in Title 43 of the

Code of Federal Regulations

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

September 21, 1964

Part 2240--Sales and Exchanges

/Circular 2162/

Subpart 2242—Townsites

2242.0–3 Authority.
2242.0–6 Qualifications of Town-Lot Purchasers.
2242.0–8 Water rights.
2242.1 Procedures.
2242.1–1 Survey and appraisal.
2242.1–2 Sale.
2242.2 Townsites platted by or for occupants.
2242.2–1 Townsite settlement.
2242.2–2 Filing required.
2242.2–3 Notice to be issued; preemption proofs; public sale of unclaimed lots.
2242.2–4 Survey.
2242.2–5 Minimum price of lots.
2242.2–6 Preemption rights.
2242.2–7 Conflicts.
2242.2–8 Forfeiture of preemption right.
2242.2–9 Conduct of sale; minimum sale price; private entry.
2242.3 Townsites entered by trustees.
2242.3–1 Lands subject to entry.
2242.3–2 Who may make town-site entry.
2242.3–3 Entry must be made in trust.
2242.3–4 Area that may be entered.
2242.3–5 Entry of unsurveyed land; special survey therefor.
2242.3–6 Declaratory statements.
2242.3–7 Existing rights.
2242.3–8 Change in method of entering town site.
2242.3–9 Additional entries of contiguous tracts.
2242.4 Reclamation projects.
2242.4–1 Withdrawal and survey of land.
2242.4–2 Procedure governing appraisement and sale.
2242.4–3 Installment payments.
2242.4–4 Reappraisement and sale of unsold lots.
2242.4–5 Public reserves; patents therefor.
2242.5 Grant of lands in reclamation town sites for school purposes.
2242.5–1 Application to be made by school district; action thereon.
2242.6 Public reserves in Oklahoma town sites.
2242.6–1 Applications for patents on behalf of the municipalities.
2242.6–2 Disposal of unpatented public reserves in vacated town sites.
2242.6–3 Disposal of patented public reserves in vacated town sites.
2242.7 Town sites on mineral lands.
2242.7–1 Rights of mineral claimant; exclusion of mineral claim or mill site from town-site entry.
2242.8 Rights of transferees of town lots.
2242.8–1 Patent to issue in name of original purchaser.
2242.9 Alaska.
2242.9–1 Authority.
2242.9–2 Townsites entered by trustee.
2242.9–3 Indian possessions in trustee towns; native towns.
2242.9–4 Method of sale.
2242.9–5 Alaska railroad town sites.

§ 2242.0–3 Authority.

Reservation of public lands for town site purposes. Public lands have been reserved by the President for town site purposes, from time to time, under section 2380 of the Revised Statutes (43 U.S.C. 711). Reservation for such purposes may now be made by public land order, by the Secretary of the Interior, pursuant to Executive Order No. 9337 of April 24, 1943 (3 CFR, 1943 Cum. Supp.). The reservations may be made

by the Secretary of the Interior on his own motion, or petitions may be addressed to him requesting the reservations. Such petitions should be filed with the State Director for the area in which the lands are situated. (E.O. 9337 was superseded by E.O. 10355.)

§ 2242.0–6 Qualifications of town-lot purchasers.

Unless otherwise provided by law, every person purchasing a town lot at public or private sale, under any law governing the sale and disposal of town sites on the public domain, will be required to furnish evidence that he is a citizen of the United States or has declared his intention to become such and every corporation purchasing a town lot will be required to furnish evidence, including a certified copy of its articles of incorporation, showing that it is a corporation organized under the laws of the United States or of any State, Territory, or possession thereof and that it is authorized to acquire and hold real estate in the State in which the town site is situated.

§ 2242.0–8 Water rights.

(a) *Water-right application for private land used for town-site purposes.* Where water-right application has been made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for town site rather than for agricultural or horticultural purposes. In such case no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder as if no such sale or sales had been made.

(b) *Water for town-site areas.* Water for land subdivided into such form and areas as to indicate a use thereof for town site rather than for agricultural or horticultural purposes may be procured for the entire areas so subdivided by contract with the Bureau of Reclamation through the proper representatives of the land owners, as authorized by the Secretary of the Interior under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U.S.C. 561, 563, 568).

(c) *Adjustment of water rights.* Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for town site rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users' association may be surrendered and canceled, and water supplied to such lands under the provisions of the acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the "reclamation fund" an amount not less than the charges due under such water-right applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

§ 2242.1 Procedures.

§ 2242.1–1 Survey and appraisal.

(a) *Survey of reserved land into blocks and lots; appraisal thereof.* Town sites reserved under section 2380, Revised Statutes, or under any other law directing their disposition under section 2381, Revised Statutes (43 U.S.C. 712) will be surveyed, when ordered by the Bureau of Land Management, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the State Director. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for pubilc purposes will not be appraised.

(b) *Schedule of appraisement; disposal of copies thereof.* The schedule of appraisement must be prepared in triplicate on forms furnished by the State Director, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to said officer.

§ 2242.1–2 Sale.

(a) *Time, place and terms of sale.* A notice of sale will be issued in each case by the authorized officer prescribing the time when, the place where, and the terms under which the lots will be offered.

(b) *Publication in Federal Register; sale to be given other publicity.* Every notice of sale shall be published in the FEDERAL REGISTER and every sale shall be given such other publicity, without cost to the Government, as may be deemed proper by the authorized officer.

(c) *Lot purchase limitation authorized; manner of making bids.* In appropriate cases the authorized officer may limit the number of lots each person may buy. Bids and payments may be made through agents, but not by mail, or at any time or place other than that fixed in the notice of sale.

(d) *Penalty for combinations in restraint of the sale.* All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or prevent the sale, and all persons so offending will be prosecuted under 18 U.S.C. 1860.

(e) *Reoffering at public sale; private entry.* (1) An offering at public sale may be adjourned or closed, in the discreation of the State Director or other officer conducting the sale. If adjourned, the unsold lots will be held for future disposition at public sale. If closed, the unsold lots will become subject to private entry at the appraised price.

(2) Lots sold at public sale and forfeited because of nonpayment of the purchase price, or for any other reason, will be held for further offering at public sale, unless reentry of the lots at private sale, at a designated price, is authorized by the notice under which the lots are sold.

(3) Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

§ 2242.2 Town sites platted by or for occupants.

§ 2242.2–1 Town site settlement.

Section 2382 of the Revised Statutes, as amended by the act of August 24, 1954 (68 Stat. 792) and sections 2383, 2384, and 2386 of the Revised Statutes (43 U.S.C. 713–715, 717), authorize the platting of town sites by or for the occupants and the disposal of such town sites, where town site settlement has been or may be made upon unreserved public lands subject to such settlement. Public lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, or 6964 of February 5, 1935, are not subject to occupation for town site purposes unless first classified for such occupation, pursuant to Subpart 2411.

§ 2242.2–2 Filing required.

(a) *Filing with county recorder of plat, field notes, and statement of improvements.* (1) The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (i) that the land does not include an area in excess of 640 acres; (ii) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the townsite survey are tied to a designated, permanent, and thoroughly identified monument; (iii) that the streets, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town, are correctly delineated thereon; and (iv) the exterior lines of all existing railroad rights-of-way and station grounds. The lots shall conform in size to local ordinances or accepted local standards for subdivision platting, or in the absence of such ordinances or standards, to standards prescribed by the authorized official of the Bureau of Land Management. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

(2) A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and over the signature of the party acting for and on behalf of the occupants of the land.

(b) *Filing in land office, in duplicate, of transcript of plat, field notes, and statement.* (1) Within one month after filing such plat, field notes, and statement,, a transcript thereof in duplicate, each copy duly verified by the certificate of the county recorder, and accompanied by the statement of the two persons that such town has been established in good faith, and showing the number of inhabitants thereof and when it was so established, shall be filed with the manager of the land office having jurisdiction

over the land district in which the town site is located.

(2) All filings made in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

§ 2242.2–3 Notice to be issued; preemption proofs; public sale of unclaimed lots.

After the town site plat has been approved by the Bureau of Land Management, a notice will be published in the FEDERAL REGISTER stating the conditions under which preemption proofs may be submitted by the lot claimants and the time, place, and conditions for the offering of the unclaimed lots at public sale. This notice should be given such other publicity without cost to the Government as is deemed appropriate.

§ 2242.2–4 Survey.

(a) *Adjustment of town-site survey to township survey.* When the town site is upon land over which the township surveys have not been extended, the State Director will be notified and thereafter, when the township surveys have been extended over the land, the exterior lines of the town site may be adjusted thereto where it can be done without impairing vested rights.

(b) *Survey by Department of the Interior; increase in price of lots.* Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as required, within 12 months from the establishment of a town on the public domain, will authorize the Bureau of Land Management to cause a survey and plat to be made thereof, the lots in which shall be disposed at an increase of 50 per centum on the minimum price.

§ 2242.2–5 Minimum price of lots.

The minimum price for all lots is $10 per lot, except in cases where the survey into lots and blocks is made by the Government, in which case the minimum price is $15 per lot.

§ 2242.2–6 Preemption rights.

(a) *Preemption claims, publishing and posting of proof notices.* (1) A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the land office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed by the applicant and the notice for publication must be issued, and posted by the manager, and published at the expense of the applicant once a week for 5 consecutive weeks, in accordance with § 1824.4 of this chapter.

(2) All notices of intention to make proof of preemption claims pursuant to this section must be accompanied by a service charge of $5 which will not be returnable.

(3) Where a husband and wife are joint settlers, and the husband purchases two lots, as stated, the wife may also purchase an "additional lot" upon which she has placed substantial improvements.

(b) *Preemption proof.* Preemption proof may be made before the manager, or any officer duly authorized by law, and must show (i) due publication of the manager's notice, (ii) the claimant's age, (iii) his citizenship, in the manner required by § 1811.1 of this chapter, and (iv) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid when the proof is made. Entry of public lands under other laws, or in other town sites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

§ 2242.2–7 Conflicts.

(a) *Hearings.* Hearings will be ordered and conducted in accordance with Part 1840 and 1850 of this chapter, where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application on or before the day fixed for making proof but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will

be required to pay the purchase price within 30 days from notice thereof.

(b) *Conflicting mineral claims.* Mineral surveys, locations, applications, and entries covering lots in such town sites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

(c) *Lots wholly or partly covered by mineral patents.* Lots wholly covered by outstanding mineral patents are not subject to entry under the town site law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued.

§ 2242.2–8 Forfeiture of preemption right.

All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the manager will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

§ 2242.2–9 Conduct of sale; minimum sale price; private entry.

The public sale will be conducted in the form and manner provided for the sale of town lots under § 2242.1–2. No lot shall be sold for less than the minimum price fixed therefor, and such lots as may not be disposed of at public sale shall thereafter be liable to further public sale or to private entry at such minimum, or at such reasonable increase or diminution as the authorized officer may order after at least 3 months' notice thereof, to be published in the FEDERAL REGISTER.

§ 2242.3 Townsites entered by trustees.

§ 2242.3–1 Lands subject to entry.

(a) *Authority.* (1) Public lands settled upon and occupied as a town site are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720), subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, Revised Statutes (43 U.S.C. 717, 721–723).

(2) Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to town-site settlement until such settlement has been authorized by classification. (See § 2411).

(b) *Government reservations not subject to entry.* Reservations for the use of the United States Government are not subject to town-site entry.

§ 2242.3–2 Who may make town-site entry.

If the town is incorporated, the entry must be made by the corporate authorities or by the mayor or other principal officer authorized so to do by resolution or ordinance of the town board or city council. If the town is not incorporated, the entry must be made by the judge of the county court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

§ 2242.3–3 Entry must be made in trust.

(a) The entry must be made in trust (1) as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries cannot be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective town sites can not be so entered.

(b) The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regu-

lations prescribed by the State laws. Acts of trustees not in accordance with such regulations are void.

§ 2242.3–4 Area that may be entered.

(a) The amount of land that may be entered under sections 2387 to 2389 inclusive of the Revised Statutes (43 U.S.C. 718–720) is proportionate to the number of inhabitants. One hundred and less than 200 inhabitants may enter not to exceed 320 acres; 200 and less than 1,000 inhabitants may enter not to exceed 640 acres; and where the inhabitants number 1,000 and over, an amount not to exceed 1,280 acres may be entered; and for each additional 1,000 inhabitants, not to exceed 5,000 in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than 100 the town site shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

(b) Entry cannot be made hereunder of a greater quantity of land than 2,580 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

§ 2242.3–5 Entry of unsurveyed land; special survey therefor.

Unsurveyed public land upon which a town has been established may be entered under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U.S.C. 718–720). In such case a special survey should be procured by application to the State Director therefor, the cost of which survey will be paid out of the available appropriations for public surveys. When the plat of such survey is filed in the land office, application may be made to enter the land described therein.

§ 2242.3–6 Declaratory statements.

(a) *Filing.* Declaratory statements may be filed as the initiatory step for the entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other town-site purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the town-site laws. It should include only such lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

(b) *Proof; posting and publication of proof notice.* The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the act of March 3, 1879 (20 Stat. 472; 43 U.S.C. 251). The notice must be published once a week for five consecutive weeks in accordance with § 1824.4 of this chapter. The proof may be made before the manager or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required, by the testimony of at least two of the advertised witnesses, (1) due publication of the manager's notice; (2) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or, if by legislative enactment, a citation to such act; (3) certified record evidence of the election, qualification, and the authority of the officer making entry; (4) the number of town-site occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the town site; (6) the character, extent, and value of town-site improvements located on each Government subdivision; and (7) the date when the land was first used for town-site purposes.

§ 2242.3–7 Existing rights.

(a) *Conflicting mineral claims.* (1) Under sections 2386 and 2392 of the Revised Statutes (43 U.S.C. 717, 722), and section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 728), the title to lands acquired under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U.S.C. 718–720) will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior town-site patent.

(2) All lands covered by patented minerals claims must be omitted from town-site entries. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated

by lot numbers on segregation diagram prepared by the State Director.

(b) *Prior use and occupation of land as mill site.* The continued use and occupation within a town site of a duly located mill-site claim under section 2337, Revised Statutes (30 U.S.C. 42), from a time prior to a settlement and occupation thereof for town-site purposes, will defeat the rights of the claimant under the town-site laws to any part of the land within such mill site.

(c) *Railroad rights-of-way.* Railroad rights-of-way and station grounds, when approved by the Department of the Interior, are subject to all valid rights existing at the date of filing the application for such rights-of-way or station grounds.

§ 2242.3–8 Change in method of entering town site.

Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, of the Revised Statutes (43 U.S.C. 713–717) but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720) and make proof and entry thereunder: *Provided, however,* That in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such town site and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to the Bureau of Land Management the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land, in order to effectuate such change of entry.

§ 2242.3–9 Additional entries of contiguous tracts.

Where town-site entry has been or may be made, under the provisions of sections 2387 to 2393 of the Revised Statutes (43 U.S.C. 718–723), additional entries may be made, under the provisions of section 4 of the act approved March 3, 1877 (19 Stat. 392; 43 U.S.C. 727), of such contiguous tracts as may be occupied for town-site purposes, but such additional entry shall not, together with all prior entries made for such town site, be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in section 2389, Revised Statutes: *Provided, however,* That such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are provided for entries under said sections 2387 to 2393, inclusive.

§ 2242.4 Reclamation projects.

§ 2242.4–1 Withdrawal and survey of land.

The Commissioner of Reclamation, with the concurrence of the Bureau of Land Management, may withdraw and reserve such lands for town site purposes, under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U.S.C. 434, 448, 561–563, 568, 594), as they may deem advisable. The Commissioner of Reclamation shall, when in his judgment the public interests require it, from time to time, cause not less than a legal subdivision, according to the official township surveys, of the lands so reserved to be surveyed into town lots, with appropriate reservations for public purposes. The plats and field notes of such surveys shall be prepared in triplicate for each town site, and shall be submitted for the approval of the Director, Bureau of Land Management.

§ 2242.4–2 Procedure governing appraisement and sale.

The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate officer of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation town sites. Notices of sale will be issued and other actions taken by those officers in accordance with the town site regulations contained in §§ 2242.0–3 and 2242.1.

§ 2242.4–3 Installment payments.

Under authority of section 2 of the act of June 11, 1910 (36 Stat. 466; 43 U.S.C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in town sites created under the laws in said act mentioned, to be made in annual installments.

§ 2242.4–4 Reappraisement and sale of unsold lots.

The Commissioner of Reclamation, with the concurrence of the authorized

officer of the Bureau of Land Management, may direct that unsold lots shall be reappraised under the first section of the said act of June 11, 1910 (36 Stat. 465; 43 U.S.C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 2242.4–5 Public reserves; patents therefor.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 2242.6–1.

§ 2242.5 Grant of lands in reclamation town sites for school purposes.

§ 2242.5–1 Application to be made by school district; action thereon.

(a) At any time after the approval of the survey of any Government reclamation town site and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district, in order to obtain title under the act of October 31, 1919 (41 Stat. 326; 43 U.S.C. 570), should file through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein, specifically describing the same by lot and block numbers, as delineated and designated on the approved town-site plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the act, in order that the Department of the Interior may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the town site is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

(c) There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation town site situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

(d) The application and proof must be filed in the land office wherein the land applied for is situate, and if the manager thereof finds the same sufficient and if the Bureau of Reclamation makes favorable report upon the said application, the manager will issue certificate of entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

§ 2242.6 Public reserves in Oklahoma town sites.

§ 2242.6–1 Applications for patents on behalf of the municipalities.

Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under section 22 of the act of May 2, 1890 (26 Stat. 91; 43 U.S.C. 1094), or under any other act where tracts have been reserved for such purposes under said secton 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the mayor or other proper municipal officer and describe the reservations to be patented according to the approved plats of said town site, and the same should be accompanied with the proof of the municipal organization of the town, similar

to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for town-site purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the Bureau of Land Management and if the same is found sufficient, the certificate of entry will issue in the form provided therefor.

§ 2242.6–2 Disposal of unpatented public reserves in vacated town sites.

Under the act approved May 11, 1896 (29 Stat. 116; 43 U.S.C. 1119), where a town site or an addition to a town site in a homestead commuted to a town-site entry under the second proviso of section 22 of the act approved May 2, 1890 (26 Stat. 91; 43 U.S.C. 1094), has been vacated under the laws of Oklahoma and patents for the public reservations therein have not been issued, such reservations will be disposed of in the following manner:

(a) Application for a patent to such reservations may be filed by the original entryman within 6 months from the vacation of the town site, and proof must be filed by him, with the Bureau of Land Management of the due vacation of such town site in accordance with the requirements of the laws of Oklahoma, which proof must consist of a copy of the record evidence of such vacation, duly certified. Such proof must also be accompanied with evidence that the corporate authorities of the municipality, if one be organized, in which the reservations were situated prior to such vacation, have been personally served 30 days prior to making such proof with notice of the application and of the date the proof will be made. If the proof be found sufficient the entry will be allowed for the reservations as described in the town-site plat upon receipt of the payment of the homestead price. If the municipality is represented at the time of making proof, it may be heard in opposition to the application and decision be rendered thereon subject to appeal as in other cases.

(b) In case of the failure of the original entryman to apply for patent to such reservations within 6 months from the vacation of such town site, or in case such reserves have been patented to the municipality and it has ceased to exist by reason of such vacation, the reservations will be disposed of as isolated tracts under the provisions of section 2455, Revised Statutes (43 U.S.C. 1171), and the acts amendatory thereof, and the regulations issued thereunder.

§ 2242.6–3 Disposal of patented public reserves in vacated town sites.

Reservations may be sold by an existing municipal corporation, upon the vacation of the town site, where patent has been issued to such municipality therefor, the proceeds of such sale to be covered into the school fund of such corporation. (City of Enid, 30 L.D. 352.)

§ 2242.7 Town sites on mineral lands.

§ 2242.7–1 Rights of mineral claimant; exclusion of mineral claim or mill site from town-site entry.

(a) The general town-site laws, comprised in sections 2380 to 2394, Revised Statutes (43 U.S.C. 711–724), authorize the entry of town sites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said town-site laws are expressly protected by sections 2386 and 2392, Revised Statutes (43 U.S.C. 717, 722). These two sections recognize the superior rights, as against any town-site claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of town-site entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (39 L.D. 356). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns), will not be prejudiced by any previous town-site entry, deed, or patent covering the same land (26 L.D. 144; 29 L.D. 426; 32 L.D. 211; 34 L.D. 276 and 596).

(b) Under said general town-site laws, as construed by the Department of the Interior and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the county judge (34 L.D. 24). While such general right of entry by or for incorporated towns and cities is therefore independent of anything contained in section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 728), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of section 16 is similar to that given generally in said sections 2386 and 2392, Revised Statutes, but the proviso to section 16 is as follows:

Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

(c) The Department of the Interior has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of town-site occupants and mineral claimants; which is, that whereas the town-site patent will, in either case, carry absolute title to any mineral not known to exist at the date of town-site entry, the adverse rights of mineral and town-lot claimants within incorporated towns are hinged upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the town-site law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the town-site entry, to contain valuable minerals.

(d) Subject to the distinction above noted, the foregoing principles apply to all mineral claims within town sites entered or disposed of under any of the laws above mentioned, and also to mineral claims within town sites disposable under special acts containing no reference to the rights of mining claimants.

(e) The law does not require that town-site entries shall exclude any mineral claim or possession except such as may have been patented (29 L.D. 21). Mineral claims which have not been patented may be excluded from a town-site entry at the option of the town-site applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L.D. 542). The exclusion of a mill-site claim from a town-site entry is necessary only in cases where the mill-site claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for town-site purposes. The issue of priority in such cases may be raised by the town-site applicant, the mill-site claimant, or the Government.

§ 2242.8 Rights of transferees of town lots.

§ 2242.8–1 Patent to issue in name of original purchaser.

The purchaser of a town lot, which is sold on the installment plan, may transfer his equitable interest in the lot, prior to the payment of the last installment of the purchase price, but the Government will not recognize anyone but the original purchaser and will issue all necessary papers and also the patent in his name. By such course, the Government is relieved of all unnecessary responsibility and the patent, when issued, inures to the benefit of the transferee.

§ 2242.9 Alaska.

§ 2242.9–1 Authority.

(a) Town sites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381 of the Revised Statutes; 43 U.S.C. 711, 712. The regulations governing these town sites are contained in §§ 2242.0 and 2242.1.

(b) The entry of public lands in Alaska for town site purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, is authorized by section 11 of the act of March 3, 1891.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

§ 2242.9–2 Townsites entered by trustee.

(a) *Survey of exterior lines; exclusions from town site survey.* If the land is unsurveyed the occupants must by application to the State Director, obtain a survey of the exterior lines of the town site which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the town site any lands set aside by the district court under section 31 of the act of June 6, 1900 (31 Stat. 332; 48 U.S.C. 40), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

(b) *Petition for trustee and for survey of lands into lots, blocks, etc.* When the survey of the exterior lines has been approved, or if the town site is on surveyed land, a petition, signed by a majority of occupants of the land, will be filed in the land office requesting the appointment of trustee and the survey of the town site into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots, as provided in paragraph (h) of this section.

(c) *Designation of trustee; payment required: area enterable.* If the petition be found sufficient, the Secretary of the Interior will designate a trustee to make entry of the town site, payment for which must be made at the rate of $1.25 per acre. If there are less than 100 inhabitants the area of the town site is limited to 160 acres; if 100 and less than 200, to 320 acres; if more than 200, to 640 acres, this being the maximum area allowed by the statute.

(d) *Filing of application; publication and posting; submission of proof.* (1) The trustee will file his application and notice of intention to make proof, and thereupon the manager will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the town site does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initated under Russian rule.

(2) The trustee's application shall be accompanied by $10 application service fee which shall not be returnable.

(e) *Expense money to be advanced by lot occupants.* The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry to be refunded to them when realized from lot assessments.

(f) *Contests and protests.* Applications for entry will be subject to contest or protests as in other cases.

(g) *Subdivision of land and payment therefore.* After the entry is made, the town site will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments collected.

(h) *Lot assessments.* The trustee will assess against each lot, according to area, its share of the cost of the subdivisional survey. The trustee will make a valuation of each occupied or improved lot in the town site and assess upon such lots, according to their value, such rate and sum in addition to the cost of their share of the survey as will be necessary to pay all other expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of the act of March 3, 1891, and this section.

(i) *Award and disposition of lots after subdivisional survey.* On the acceptance of the plat by the Bureau of Land Management, the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional town site survey or their assigns thereafter, are entitled to the allotments herein provided. Minority and coverture are not disabilities.

(j) *Applications for deeds.* Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be corroborated by two witnesses.

(k) *Issuance of deeds; procedure on conflicting applications.* (1) Upon re-

ceipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots, the trustee, if he considers it necessary, may order a hearing to be conducted in accordance with the Part 1850 of this chapter.

(2) No deed will be issued for any lot involved in a contest until the case has been finally closd. Appeals from any decision of the trustee or from decisions of the Bureau of Land Management may be taken in the manner provided by Part 1840 of this chapter.

(l) *Public sale of unclaimed lots.* After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional town-site survey, and all lots and tracts claimed and awarded on which the assessments have not been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional town-site survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot, and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published once a week for 5 consecutive weeks in accordance with § 1824.4 of this chapter prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the town site. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

(m) *Sales to Federal, State and local governmental agencies.* (1) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to this section may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him to any Federal or State agency or instrumentality or to any local governmental agency or instrumentality of the State for use for public purposes.

(2) All conveyances under this section shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances, including, where he deems proper, a provision for reversion of title to the trustee or his successor in interest. Any such provision for reversion of title, however, shall by its terms cease to be in effect 25 years after the conveyance.

(3) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city, town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision of the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon filing of an appeal pursuant to that Part, action by the trustee on the conveyance will be suspended pending final decision on the appeal.

(n) *Rights - of - way.* (1) Notwithstanding any other provisions of this part, the trustee is authorized to grant rights-of-way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights-of-way to cities, towns, villages, and municipalities, and to school, utility, and other types of improvement districts, and to persons, associations, companies, and corporations engaged in furnishing utility services to the general public, and to the United States, any Federal or State agency or

instrumentality for use for public purposes.

(2) The trustee may in his discretion fix a reasonable charge for any grant under this authority to private persons, associations, companies and corporations, and to Federal and State agencies and instrumentalities, which charge shall be a lump sum. All grants shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances. No grants of rights-of-way under this authority shall be made across or upon lands on which prior rights of occupancy or entry have vested under the law.

(3) Grants of rights-of-way under this section to Federal and State agencies and instrumentalities to private persons, associations, companies, or corporations affecting lands within any incorporated city, town, village, or municipality, may be made only after the proposed grant has received the approval of the city, town, or village council, or, where applicable, the municipal board or commission having authority under state law to approve rights-of-way for local public utility purposes. Grants of such rights-of-way to Federal and state agencies and instrumentalities and to private persons, associations, companies, or corporations within unincorporated cities, towns, villages, or municipalities may be made only after notice of the proposed grant, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision by the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon the filing of an appeal, action by the trustee on the application for right-of-way will be suspended pending final decision on the appeal.

(o) *Final report of trustee; disposition of unexpended moneys and unsold lots.* After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved.

(p) *Records to be kept by trustee.* The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

(q) *Disposition of records on completion of trust.* The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as provided in paragraph (p) of this section with all papers, other books, and everything pertaining to such town site in his possession and all evidence of his official acts shall be transmitted to the Bureau of Land Management to become a part of the records thereof, excepting from such papers, however, in case the town is incorporated, the subdivisional plat of the town site, which he will deliver to the municipal authorities of the town, together with a copy of the town site tract book or books, taking a receipt therefor to be transmitted to the Bureau of Land Management.

(Sec. 11, 26 Stat. 1099, 43 U.S.C. 355)

§ 2242.9–3 Indian possessions in trustee towns; native towns.

(a) *Authority.* The act of May 25, 1926, (44 Stat. 629; 48 U.S.C. 355a–355d) provides for the town-site survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee town-sites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The act of February 26, 1948 (62 Stat. 35; 48 U.S.C. 355e), provides for the issuance of an unrestricted deed to

any competent native for a tract of land claimed and occupied by him within any such trustee town-site.

(b) *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee town-sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 48 U.S.C. 355), and for which the town-site trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee town-sites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

(c) *Application for restricted deed.* A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee town-site and who desires to obtain a restricted deed for such tract should file application therefor on a form approved by the Director, with the town-site trustee.

(d) *Administation of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926 (44 Stat. 630; 48 U.S.C. 355c), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

(e) *No payment, publication or proof required on entry for native towns.* In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town-sites will not be required.

(f) *Native towns occupied partly by white occupants.* Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

(g) *Provisions to be inserted in restricted deeds.* The town site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

(h) *Sale of land for which restricted deed was issued.* When a native possessing a restricted deed for land in a trustee town site, issued under authority of the act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a–355d), desires to sell the land, he should execute a deed on a form approved by the Director, prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the town-site trustee in Alaska. The town-site trustee will forward the deed to the Area Director of the Bureau of Indian Affairs who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Bureau of Indian Affairs, through the town-site trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(i) *Application for unrestricted deed.* Any Alaska native who claims and occupies a tract of land in a trustee town site is the owner of land under a restricted deed issued under the act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a–355e) may file an application for an unrestricted deed pursuant to the act

of February 26, 1948 (62 Stat. 35; 48 U.S.C. 355e), with the town-site trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Bureau of Indian Affairs.

(j) *Determination of competency or noncompetency; issuance of unrestricted deed.* (1) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the town-site trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the town-site trustee shall be subject to a right of appeal to the Director, Bureau of Land Management, and to the Secretary of the Interior, in accordance with Part 1840 of this chapter.

(2) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs, within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(3) Except as provided in this section, the town-site trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

(44 Stat. 630; 48 U.S.C. 355d. Interpret or apply 44 Stat. 629, 630, 62 Stat. 35; 48 U.S.C. 355a, 355b, 355c, 355e)

§ 2242.9–4 Method of sale.

Sales of railroad town sites in Alaska, provided for by Executive Order No. 3489 of June 10, 1921, § 2242.9–5(a)–(j), will be made by the authorized officer in Alaska, as superintendent of sales of railroad town sites in accordance with town-site regulations contained in §§ 2242.0–3 to 2242.1–2(e) so far as those regulations are applicable.

(Sec. 1, 36 Stat. 305; 48 U.S.C. 803)

§ 2242.9–5 Alaska Railroad town sites.

It is hereby ordered that the administration of that portion of the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 301, 302, 303–308) relating to the withdrawal, location and disposition of town sites shall be in accordance with the following regulations and provisions, to wit:

(a) *Reservations.* The Alaskan Engineering Commission will file with the Secretary of the Interior, when deemed necessary, its recommendations for the reservation of such areas as in its opinion may be needed for town site purposes. The Secretary of the Interior will thereupon transmit such recommendations to the President with his objections thereto or concurrence therewith. If approved by the President, the reservation will be made by Executive order.

(b) *Survey.* When in the opinion of the Secretary of the Interior the public interests require a survey of any such reservation, he shall cause to be set aside such portions thereof for railroad purposes as may be selected by the Alaskan Engineering Commission, and cause the remainder, or any part thereof, to be surveyed into urban or suburban blocks and lots of suitable size, and into reservations for parks, schools, and other public purposes and for Government use. Highways should be laid out, where practicable, along all shore lines, and sufficient land for docks and wharf purposes along such shore lines should be reserved in such places as there is any apparent necessity therefor. The survey will be made under the supervision of the Commissioner of the General Land Office and the plats will be approved by him and by the chairman of the Alaskan Engineering Commission.

(c) *Preference right.* Any person residing in a reserved town site at the time of the subdivisional survey thereof in the field and owning and having valuable and permanent improvements

thereon, may, in the discretion of the Secretary of the Interior, be granted a preference right of entry, of not exceeding two lots on which he may have such improvements by paying the appraised price fixed by the superintendent of sale, under such regulations as the Secretary of the Interior may prescribe. Preference right proof and entry, when granted, must be made prior to the date of the public sale.

(d) *Public sale.* The unreserved and unsold lots will be offered at public outcry to the highest bidder at such time and place, and after such publication of notice, if any, as the Secretary of the Interior may direct, and he may appoint or detail some suitable person as superintendent of sale to supervise the same and may fix his compensation and require him to give sufficient bond.

(e) *Superintendent's authority.* Under the supervision of the Secretary of the Interior the superintendent of the sale will be, and he is hereby, authorized to make all appraisements of lots and at any time to reappraise any lot which in his judgment is not appraised at the proper amount, or to fix a minimum price for any lot below which it may not be sold, and he may adjourn, or postpone the sale of any lots to such time and place as he may deem proper.

(f) *Manner and terms of public sale.* (1) The Secretary of the Interior shall by regulations prescribe the manner of conducting the public sale, the terms thereof and forms therefor and he may prescribe what failures in payment will subject the bidder or purchaser to a forfeiture of his bid or right to the lot claimed and money paid thereon. The superintendent of sale will at the completion of the public sale deposit with the receiver of the proper local land office the money received and file with its officers the papers deposited with him by said bidder, together with his certificate as to successful bidder.

(2) If it be deemed advisable, the Commissioner of the General Land Office may direct the receiver of public moneys of the proper district to attend sales herein provided for in which event the cash payment required shall be paid to the said receiver.

(g) *Anchorage, Matanuska, and Nenana town sites.* (1) Unsold and forfeited lands in the town sites of Anchorage, Matanuska, and Nenana, upon which assessments for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection have been levied by the Alaskan Engineering Commission and the assessments or any portion thereof remaining unpaid shall be subject to such unpaid assessments and the purchaser shall pay the same in the manner the Secretary of the Interior may by regulations provide, and the proceeds of such assessments will be deposited with the Alaskan Engineering Commission, as a reimbursement to the operating expense fund as provided in section 8 of the act of March 12, 1914 (38 Stat. 307; 48 U.S.C. 306). See 22 Comp. Dec. 604. Hereafter no such assessments by said Commission will be levied.

(2) In cases where one of a number of joint purchasers of a lot has made or may hereafter make all payments of his pro rata share of the purchase price and assessments on the lot, such lot may, in the event of forfeiture being declared, and in the discretion of the Secretary of the Interior, be re-subdivided and a preference right of purchase given to the person who has made all payments on his portion thereof, such preference right to be confined to the portion of the original lot held and claimed by such person. This privilege may be extended to a transferee of an original purchase.

(3) Final certificate may issue in these town sites in all cases, when the purchase price and assessments are paid in full without regard to date of purchase.

(h) *Commission buildings on lots.* Buildings belonging to the Alaskan Engineering Commission situated on a lot in any town site may be appraised and sold separate and apart from the lot on which located, under regulations provided by the Secretary of the Interior for the same and for the removal of the buildings. The proceeds for the sale of such buildings shall be paid to the Alaskan Engineering Commission as a reimbursement to its operating account.

(i) *Private entry.* Lots offered at public sale and not sold and lots offered and declared forfeited in a town site may, in the discretion of the Secretary of the Interior, be sold at private entry for the appraised price.

(j) *Orders revoked.* All Executive orders heretofore issued for the disposition of town sites along the Government railroads in Alaska are hereby revoked so

far as they conflict with the foregoing provisions. This order is intended to take the place of all other orders making provisions for the sale and disposal of lots in said town sites along Government railroads in Alaska under the provisions of said act.

(k) *Amendments*—(1) *Executive Orders.* (i) Section 2242.9–5 (a) through (j) are amended by E.O. 3529, Aug. 9, 1921 and E.O. 5136, June 12, 1929.

(ii) The designation of the "Alaskan Engineering Commission" has been changed to "The Alaska Railroad." All matters which formerly were under the control of the chairman of said commission now are under the supervision of the general manager of the said railroad. The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

(iii) Due to the change in organization, plats of Alaska Railroad town sites are not approved by an official of the Alaska Railroad.

(iv) The State Director in Alaska has been designated as Superintendent of Sales of Alaska Railroad town sites.

(2) *Executive Order 3529. It is ordered,* That Executive Order No. 3489, issued June 10, 1921, be, and the same is hereby amended to authorize and empower the Alaskan Engineering Commission to levy and collect assessments for town site expenses for the town site of Nenana, for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection, for the period from July 1, 1920, to August 31, 1921.

CROSS REFERENCES: For surveys, Alaska, see Part 9180 of this chapter. For town sites, Alaska, see §§ 2242.9–1(a) to 2242.9–4.

(3) *Executive Order 5136.* (i) It is ordered that Executive Order No. 3489, issued June 10, 1921, containing the Alaska Railroad Town Site Regulations, is hereby amended to authorize the Secretary of the Interior to reappraise and sell the unimproved lots in Nenana Town Site, Alaska, belonging to the United States, and to readjust the assessments levied against them for the improvement of streets, sidewalks, and alleys, and for the promotion of sanitation and fire protection by the Alaska Railroad prior to August 31, 1921.

(ii) As to the lots within said town site which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

(iii) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

This Circular supersedes Circulars 1810, 1980, 2016 and that portion of Circular 2001 relating to 43 CFR Part 80.

GPO 845-227

Repl. by C-2190

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular 2163]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Miscellaneous Amendments

1. Paragraphs (a), (b), (c), (d), and (e) of § 4111.4–2 are rearranged and reworded to read as follows:

§ 4111.4–2 Reduction.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or

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Circular Distribution List

other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

* * * * *

2. Paragraph (d) of § 4114.1–5 is amended to read as follows:

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

* * * * *

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

* * * * *

3. Subparagraph (2) of paragraph (a), paragraph (h), and subparagraph (3) of paragraph (k) of § 4115.2–1 are amended to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.*

* * * * *

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

* * * * *

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

* * * * *

(k) *Fees for grazing licenses and permits.*

* * * * *

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

JOHN A. CARVER, Jr.,
Acting Secretary
of the Interior.

SEPTEMBER 23, 1964.

[F.R. Doc. 64–9815; Filed, Sept. 28, 1964; 8:46 a.m.]

This circular supersedes the portion of Circular 2145 relating to §4111.4-2(a) thru (e), §4114.1-5(d), §4115.2-1(a)(2), §4115.2-1(h), and §4115.2-1(k)(3).

GPO 845-111

CIRCULAR NO. 2164

Regulations pertaining to

HEARINGS PROCEDURES

As contained in Title 43 of the

Code of Federal Regulations

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

September 21, 1964

Subpart 1850—Hearings Procedures; General

Sec.
1850.0–3 Authority.
1850.0–5 Definitions.
1850.0–6 Documents.
1850.0–7 Subpoena power and witness provisions.
1850.0–8 Basis of decision.
1850.0–9 General provisions.

Subpart 1851—Hearings on Appeals Involving Questions of Fact

1851.1 Prehearings conferences.
1851.2 Fixing of place and date for hearing; notice.
1851.2–1 Postponements.
1851.3 Authority of the Field Commissioner.
1851.4 Conduct of hearing.
1851.5 Evidence.
1851.6 Reporter's fees.
1851.7 Copies of transcript.
1851.8 Summary of evidence.
1851.9 Action by Field Commissioner.

Subpart 1852—Contest and Protest Proceedings

1852.1 Private contests and protests.
1852.1–1 By whom private contest may be initiated.
1852.1–2 Protests.
1852.1–3 Initiation of contest.
1852.1–4 Complaints.
1852.1–5 Service.
1852.1–6 Answer to complaint.
1852.1–7 Action by Manager.
1852.1–8 Amendment of answer.
1852.2 Government contests.
1852.2–1 How initiated.
1852.2–2 Proceedings in Government contests.
1852.3 Proceedings before the examiner.
1852.3–1 Prehearing conferences.
1852.3–2 Notice of hearing.
1852.3–3 Postponements.
1852.3–4 Authority of Examiner.
1852.3–5 Conduct of hearing.
1852.3–6 Evidence.
1852.3–7 Reporter's fees; transcript.
1852.3–8 Findings and conclusions; decision by examiner; submission to Director for decision.
1852.3–9 Appeal to Director.

Subpart 1853—Grazing Proceedings

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

1855.1 Petitions of native groups.
1855.2 Hearing and notice.
1855.3 Powers of presiding officer.
1855.4 Appearances.
1855.5 Evidence.
1855.5–1 Rules of evidence.
1855.5–2 Opinion evidence.
1855.5–3 Stipulations.
1855.5–4 Depositions.
1855.5–5 Objections.
1855.6 Oral arguments and briefs.
1855.7 Filing the record of the hearing.
1855.8 Determination by the Secretary of the Interior.
1855.8–1 Report of findings and conclusions by presiding officer.
1855.8–2 Rehearing.
1855.9 Publication and revision.
1855.9–1 Public notice of regulations.
1855.9–2 Revision of subpart.

Subpart 1850—Hearing Procedures; General

AUTHORITY: The provisions of this Subpart 1850 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1850.0–3 Authority.

(a) Sections 1850.0–3 to 1852.3–9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

(b) Sections 1853.1 to 1853.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201 and sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

(c) Sections 1855.1 to 1855.9–2 are issued under the authority of R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1850.0–5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

§ 1850.0–6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7(c) and does not apply to requests for postponement of hearings under §§ 1852.3–1 and 1852.3–2 and request for relief from reporter's fees under § 1852.3–6.

(c) *Record address.* Every person who files a document in connection with a contest or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post-office of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it

is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) The Manager or the Examiner, as the case may be, may extend the time for filing or serving any document in a contest.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1850.0–7 Subpoena power and witness provisions.

(a) *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821. Subpoenas will be issued on a form approved by the Director.

(b) *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be.

(c) *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

§ 1850.0–8 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of the Director, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in a contest the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the contest.

(b) *Official notice.* Official notice may be taken of the contents of the tract books, the serial registers, the approved plats of survey and other public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Where a decision in a case in which a hearing has been held rests upon official notice of a material fact relating to an issue upon which the hearing was held, the decision will so state and will allow any party upon request to have an opportunity to show to the contrary. Such request must be filed and served within the time and in the manner prescribed in the decision. Where a decision or recommendation has rested upon such official notice and has afforded the parties an opportunity to show to the contrary, no further opportunity to show to the contrary will be allowed.

§ 1850.0–9 General provisions.

(a) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(b) *Inquiries.* No person other than officers or employees of the Department

of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(c) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1851—Hearings on Appeals Involving Questions of Fact

AUTHORITY: The provisions of this Subpart 1851 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1851.1 Prehearing conferences.

(a) The Field Commissioner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau of Land Management, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings before the Field Commissioner or before the Director.

(b) The Field Commissioner shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the Field Commissioner unless modified for good cause, by subsequent order.

§ 1851.2 Fixing of place and date for hearing; notice.

The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 1851.2–1 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justified beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1851.3 Authority of the Field Commissioner.

The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102–106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Director in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by § 1850.0–7.

§ 1851.4 Conduct of hearing.

So far as not inconsistent with the prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts. Unless the Field Commissioner directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 1851.5 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Field Commissioner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 1851.6 Reporter's fees.

(a) Where a hearing is requested, each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross examination of other witnesses.

(b) Where a hearing is ordered by the Director upon his own motion, each party who prevails in the Director's decision will be required to pay the reporter's fees covering the party's direct evidence and cross examination of other witnesses. The remainder of the reporter's fees will be paid by the Government.

(c) Reporter's fees will be at rates established for the local courts or, if the reporting is done pursuant to a contract, at rates established by the contract. The Field Commissioner may require the parties to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Any part of a deposit not used will be returned to the depositor except that deposits which are required pursuant to § 1843.5–1 in advance of a hearing will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States.

§ 1851.7 Copies of transcript.

Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 1851.8 Summary of evidence.

The parties and the Bureau may, with the consent of the Field Commissioner, agree that a summary of the evidence approved by the Field Commissioner may be filed in the case in lieu of a transcript. In such case the Field Commissioner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record. If, on appeal to the Secretary, a party wishes to utilize the transcript instead of the summary, he must furnish at his expense a copy of the transcript for the case record.

§ 1851.9 Action by Field Commissioner.

Upon completion of the hearing and the incorporation of the summary or transcript in the record, the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary.

Subpart 1852—Contest and Protest Proceedings

AUTHORITY: The provisions of this Subpart 1852 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1852.1 Private contests and protests.

§ 1852.1–1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in the subpart.

§ 1852.1–2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 1852.1–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the land office which has jurisdiction over the land involved, or, if there is no such land office, in the Office of the Director, Bureau of Land Management, Washington, D.C., 20240. The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 1850.0–6(e), in the office where the complaint was filed within 30 days after service.

§ 1852.1–4 Complaints.

(a) *Contents of complaint.* The complaint shall contain the following information, under oath:

(1) The name and address of each party interested, including the age of each heir of any deceased entryman.

(2) A legal description of the land involved.

(3) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest in, such land.

(4) A statement in clear and concise language of the facts constituting the grounds of contest.

(5) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so.

(6) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith.

(7) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated.

(8) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant.

(9) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed.

(b) *Amendment of complaint.* Except insofar as the Manager, Examiner, Director or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the examiner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

(c) *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

(d) *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

(e) *Waiver of issues.* Any issue not raised by a private contestant in accordance with the provisions of paragraph (b) of this section, which was known to him, or could have been known to him by the exercise of reasonable diligence, shall be deemed to have been waived by him, and he shall thereafter be forever barred from raising such issue.

§ 1852.1–5 Service.

The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 1850.-0–6(e). If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal service, by post-office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in § 1852.5(b)(1). When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the legal guardian or committee, if there be one, of such infant or person of unsound mind; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

(a) *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of §§ 1852.1–4 (a) and (c), or if the complaint is not served upon each contestee as required by this section, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived.

(b) *Service by publication*—(1) *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(i) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(ii) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(iii) State the last known address of the contestee; and

(iv) State in detail the efforts and inquiries made to locate the party sought to be served.

(2) *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

(3) *Publication, mailing and posting of notice.* (i) Notice by publication shall be made by publishing notice at least once a week for five successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(ii) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(iii) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

(c) *Proof of service.* (1) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with § 1852.1–5(b)(3).

(2) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director as to posting in his office.

(3) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 1852.1–6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 1852.1–5(b)(3). The answer shall contain or be accompanied

by the address to which all notices or other papers shall be sent for service upon contestee.

§ 1852.1–7 Action by Manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decided the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an examiner upon determining that the elements of a private contest appear to have been established.

§ 1852.1–8 Amendment of answer.

At the hearing, any allegation not denied by the answer will be considered admitted. The examiner may permit the answer to be amended after due notice to other parties and an opportunity to object.

§ 1852.2 Government contests.

§ 1852.2–1 How initiated.

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 1852.2–2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) No filing fee or deposit toward reporter's fee shall be required of the Government.

(c) Any action required of the contestant may be taken by any authorized Government employee.

(d) The statements required by § 1852.1–4(a) (5) and (6) need not be included in the complaint.

(e) No posting of notice of publication on the land in issue shall be required of the Government.

(f) Where service is by publication, the affidavits required by § 1852.1–5(b) (1) need not be filed. The contestant shall file with the Manager a statement of diligent search which shall state that the contestee could not be located after diligent search and inquiry, the last known address of the contestee and the detail of efforts and inquiries made to locate the party sought to be served. The diligent search shall be concluded not more than 15 days prior to filing of the statement.

(g) In lieu of the requirements of § 1852.1–5(b) (3) (ii) the contestant shall, as part of the diligent search before the publication or within 15 days after the first publication send a copy of the complaint by Certified Mail, return receipt requested, to the contestee at the last address of record. The return receipts shall be filed in the office in which the contest is pending.

(h) The affidavit required by § 1852.1–5(b) (3) (iii) need not be filed.

(i) The provisions of paragraph (e) of § 1852.1–4 shall be inapplicable.

§ 1852.3 Proceedings before the examiner.

§ 1852.3–1 Prehearing conferences.

(a) The Examiner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Examiner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the Examiner unless modified for good cause, by subsequent order.

§ 1852.3–2 Notice of hearing.

The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

§ 1852.3–3 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1852.3–4 Authority of Examiner.

The Examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (43 U.S.C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by § 1850.0–7.

§ 1852.3–5 Conduct of hearing.

So far as not inconsistent with a prehearing order, the Examiner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 1852.3–6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross examination. The Examiner may question any witness. Documentary evidence may be received if pertinent to any issue. The Examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Examiner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of an Examiner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 1852.3–7 Reporter's fees; transcript.

(a) Each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross-examination of other witnesses except that

(1) In the case of a private contest, if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(2) In the case of a Government contest, if the ultimate decision is adverse to the Government, the Bureau must pay all the reporter's fees otherwise payable by the contestee.

(3) In the case of a Government contest the contestee may be relieved of paying his share of the reporter's fees if he is financially unable to pay his share. In order to secure such relief he must file with the Examiner at least 15 days prior to the date set for the hearing a request

for such relief, supported by an affidavit setting forth in detail facts showing his financial inability to pay. If the Examiner in his discretion determines that the applicant for relief is financially unable to pay his share of the reporter's fees, the Bureau will bear the cost of such share.

(b) Except where a party is relieved of paying the reporter's fees pursuant to subparagraph (3) of paragraph (a) of this section, each party shall be required by the examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits must be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (a) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(c) Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost.

§ 1852.3–8 Findings and conclusions; decision by hearing examiner; submission to Director for decision.

(a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the examiner, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Director may require, in any designated case, that the examiner make only a recommended decision and that the decision and the record be submitted to the Director for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Director shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

§ 1852.3–9 Appeal to Director.

Any party, including the Government, adversely affected by the decision of the examiner may appeal to the Director as provided in Part 1840. No further hearing will be allowed in connection with the appeal to the Director but the Director, after considering the evidence, may remand any case for further hearing if he considers such action necessary to develop the facts.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal

shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues

involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute

the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Prccedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the

State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

AUTHORITY: The provisions of this Subpart 1855 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1855.1 Petitions of native groups.

Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1952. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

§ 1855.2 Hearing and notice.

The Secretary of the Interior or such other presiding officer as may be designated by the Secretary of the Interior shall hold public hearings upon the possessory claims of native groups of Alaska. The Secretary will give notice of the hearings by publication of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. The Secretary will also cause a copy of the said notice to be mailed to the last known address of all parties who are shown by the preliminary investigations to have interests in the area concerned which may be adversely affected by the claims asserted. The hearing may be continued from time to time and adjourned to a later date or a different place without notice other than the announcement thereof by the presiding officer at the hearing.

§ 1855.3 Powers of presiding officer.

(a) The hearing shall be conducted in an informal but an orderly manner in accordance with the rules of practice hereinafter set forth. Matters of procedure not covered by this section shall be determined by the presiding officer. He shall have power to: (1) Administer oaths; (2) rule upon motions and requests; (3) examine witnesses and receive evidence; (4) admit or exclude evidence and rule upon objections; (5) hear oral arguments and receive memoranda on facts and law in his discretion; (6) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(b) At any stage of the hearing, the presiding officer may call for further evidence upon any matter. In the event that the hearing shall be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place for the taking of evidence shall be published in the FEDERAL REGISTER and sent to all parties who appeared at the hearing.

(c) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

§ 1855.4 Appearances.

Any interested person including any agency of the Department or other governmental agency shall be given an opportunity to appear either in person or through authorized counsel or other representation and to be heard with respect to matters relevant and material to the proceeding. Each such person or representative shall be required to inform the presiding officer of his name and address, the names, addresses and occupations of persons, if any, whom he represents and the position he takes with respect to the issues of the hearing. Where a person appears through counsel or representation, such counsel or representative shall before proceeding to testify, or otherwise to participate in the hearing, state for the record his authority to act as such counsel or representative.

§ 1855.5 Evidence.

(a) The evidence of the witnesses shall be given under oath. Witnesses may be questioned by the presiding officer or by any person who has entered an appearance for the purpose of assisting the presiding officer in ascertaining the material facts with respect to the subject matter of the hearing.

(b) The evidence, including affidavits, records, documents and exhibits received at the hearing, shall be reported and a transcript thereof shall be made. In the discretion of the presiding officer, written evidence may be received without being read into the record. Every party shall be afforded adequate opportunity to cross-examine, rebut or offer contravening evidence. Evidence shall be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

§ 1855.5–1 Rules of evidence.

All evidence having reasonable probative value shall be admitted, regardless of common law or statutory rules of evidence, but immaterial, irrelevant or unduly repetitious evidence shall be excluded.

§ 1855.5–2 Opinion evidence.

In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

§ 1855.5–3 Stipulations.

In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

§ 1855.5–4 Depositions.

The presiding officer may order evidence to be taken by deposition at any stage of the proceeding before any person designated by him and having the power to administer oaths or affirmations. Unless notice be waived no deposition shall be taken except after reasonable notice to the parties. Any person desiring to take a deposition of a witness shall make application in writing setting out the reasons why such deposition should be taken and stating the time when, the place where, and the name and address of the person before whom it is desired the deposition should be taken, the name and address of the witness and the subject matter concerning which the witness is expected to testify. If good reason be shown, the presiding officer will make and serve upon the parties or their attorneys an order naming the witness whose deposition is to be taken and specifying the time when, the place where, and the person before whom the witness is to testify. These may or may not be the same as those named in the application. The deponent shall be subject to cross-examination by all the parties appearing. In lieu of oral cross-examination, parties may transmit written cross-interrogations to the deponent. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the officer. Such deposition, unless otherwise ordered by the presiding officer for good cause shown, shall be filed in the record in the proceeding and a copy thereof supplied to the party upon whose application said deposition was taken or his attorney.

§ 1855.5–5 Objections.

It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

§ 1855.6 Oral arguments and briefs.

(a) Oral arguments may be permitted in the discretion of the presiding officer. Such arguments shall be made a part of the transcript, if the presiding officer so orders.

(b) Briefs and proposed findings of fact and conclusions of law may not be filed after 30 days from the close of the hearing unless otherwise ordered by the presiding officer.

§ 1855.7 Filing the record of the hearing.

As soon as practicable after the close of the hearing the complete record shall be filed with the presiding officer. It shall consist of the transcript of the testimony and include exhibits and any written arguments that may have been filed. This record shall be the sole official record. No free copies of the record will be available in any proceeding under this section.

§ 1855.8 Determination by the Secretary of the Interior.

§ 1855.8–1 Report of findings and conclusions by presiding officer.

Within a reasonable time of the filing of the record of the hearing, the presiding officer shall file with the Secretary of the Interior a report upon the possessory claims of the petitioner which shall contain findings of fact and conclusions of law with respect to such claims. Unless final authority has been delegated by the Secretary to the presiding officer, the Secretary of the Interior will approve, disapprove or modify the findings and conclusions of the presiding officer. The determinations finally made shall be published in the FEDERAL REGISTER and a copy thereof shall be mailed to each party who appeared at the hearing or who received actual written notice of the hearing.

§ 1855.8–2 Rehearing.

Upon good cause shown within 30 days of the publication of the presiding officer's report, the Secretary in his discretion may order a rehearing.

§ 1855.9 Publication and revision.

§ 1855.9–1 Public notice of regulations.

Public notice of the issuance of the foregoing rules of practice for hearings shall be given by publishing the same in the FEDERAL REGISTER.

§ 1855.9–2 Revision of subpart.

This subpart may be revised by the Secretary of the Interior at any time without prior notice and such revision shall be published in the FEDERAL REGISTER.

This circular supersedes and replaces Circulars 2138 amd 2148.

GPO 845-226

CIRCULAR NO. 2165

Regulations pertaining to

APPLICATION PROCEDURES

As contained in Title 43 Code of Federal Regulations

September 21, 1964

Regulations pertaining to

APPLICATION

PROCEDURES

As contained in Title 43 Code of Federal Regulations

September 21, 1964

Repl. by C-2205

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT

[Circular 2165]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

Sec.

1821.1 Names of claimants.
1821.2 Office hours; time and place for filing.
1821.2–1 Office hours of land offices.
1821.2–2 Time limit for filing applications.
1821.2–3 Simultaneous applications.
1821.2–4 Use of certified mail.
1821.3 Oaths.
1821.3–1 Elimination of the requirements.
1821.3–2 Officers qualified.
1821.3–3 Identity of applicant to be established prior to administering oath.
1821.3–4 Attachment of jurat.
1821.3–6 Officers qualified to administer oath in Alaska.
1821.4 Notations on applications.
1821.4–1 Notation of rights-of-way.
1821.4–2 When notation required.
1821.4–3 When notation not required.
1821.5 Entries for lands in more than one land district.
1821.5–1 Governing regulations.
1821.5–2 Applications and fees to be filed in each office.
1821.5–3 Mining claims.
1821.5–4 Public offerings.
1821.6 Amendments.
1821.6–1 Authority.
1821.6–2 Application to amend; form; where filed.
1821.6–3 Showings required.
1821.6–4 Publication of notice; statements of witnesses.
1821.6–5 Amendments in exercise of equitable powers.
1821.6–6 Entry improperly allowed not to be amended.
1821.6–7 When amendment becomes effective.
1821.7 Unsurveyed lands, lands within national forests, reservoir sites.
1821.7–1 Applications and selections for, and filings and locations upon, unsurveyed land.
1821.7–2 Application alleging settlement prior to establishment of forest.
1821.7–3 Application in conflict with reservoir sites.
1821.9 Alaska.
1821.9–1 Applications not to be rejected because executed more than 10 days prior to filing.
1821.9–2 Joint action to acquire public lands.

AUTHORITY: The provision of this Subpart 1821 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1821.1 Names of claimants.

Full names of claimants should appear in applications, final certificates, and patents.

§ 1821.2 Office hours; time and place for filing.

§ 1821.2–1 Office hours of land offices.

(a) Land offices and the Washington office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of national holidays, the Monday following each national holiday which falls on a Sunday, and days upon which the office may be closed by Presidential or other administrative order. The hours during which the land offices and the Washington office are open to the public for the filing of documents and inspection of records are from 10:00 a.m. to 3:00 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

(b) Applications to make entry cannot be received by the manager out of office hours, nor elsewhere than at his office, nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

(1) Copies of forms may be obtained from the land offices, State Director's offices or the Bureau of Land Management, Washington, D.C., 20240, and must be completed and filed in proper land office, or for land in States for which there are no land offices, with the Bureau of Land Management, Washington, D.C., 20240, except that applications for lands in North or South Dakota, must be filed in the land office at Billings, Montana; for lands in Nebraska or Kansas in the

land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 1821.2–2 Time limit for filing applications in Land Office.

(a) The manager will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the usual right of appeal; also subject to the right to file a new and properly executed application, or to reexecute the rejected application, prior to the intervention of any valid adverse claim.

(c) The manager will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the land office or the Washington office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the land office or the Washington office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

§ 1821.2–3 Simultaneous applications.

All applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening in involved, the applications will be treated as having been filed simultaneously if they are received by a land office (or, if there is no such office for the State, by the Washington Office of the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation, applications which are filed simultaneously will be processed in accordance with the following rules:

(a) All such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.

(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.

(1) Notwithstanding the provisions of paragraph (a) of this section, the priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3123.9 of this chapter will be determined by public drawing whether or not they are in conflict.

(c) All applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations.

§ 1821.2–4 Use of certified mail.

Certified mail as outlined in 39 CFR Part 58, may be used in lieu of registered mail in public land matters within the jurisdiction of the Department of the Interior except where use of registered mail is specifically required by statute.

§ 1821.3 Oaths.

§ 1821.3–1 Elimination of the requirements of oaths on written statements in public land matters.

(a) By section 1 of the act of June 3, 1948 (62 Stat. 301; 43 U.S.C. 1211), written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require. Accordingly, all written statements in public land matters within the jurisdiction of the Department of the Interior required prior to June 3, 1948, by law, or Chapter I of this title, to be made under oath, need no longer be made under oath, except as provided in this paragraph.

(1) Affidavits must be furnished where required by Parts 1840 and 1850.

(2) Final proofs required by R.S. 2294 (43 U.S.C. 254) as amended and supplemented, and the regulations thereunder, to be taken in affidavit form before designated officers shall be taken in that form before such officers. (See §§ 1821.3–6,

2211.1–4 (b), (c) (1), 1821.3–2, and 2226.-1–5(d) of this chapter.

(3) Statements as to the financial worth of individual sureties on bonds furnished in connection with leases, licenses or permits granted under the public land laws, known as "Affidavits of Justification," must be made in affidavit form.

(b) Where prior to June 3, 1948, the law required an application or other paper to be sworn to in a particular land district, and this section makes it unnecessary for the paper to be executed in affidavit form, the applicant still must sign the paper in the particular land district and state in the paper that it was so signed.

(c) Unsworn statements in public land matters are subject to Title 18, U.S.C., section 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction.

(d) False statements as to any material fact made by an applicant in connection with applications, allowance of which is discretionary with the authorized officer, are a proper basis for rejection of the applications.

§ 1821.3–2 Officers qualified.

(a) Oaths required under the homestead, preemption, timber-culture, desert-land, and timber and stone acts may, in States for which there is a land office, be made before the manager or the acting manager of the land office for the district embracing the land sought; or before any of the following officers inside the county, parish, or land district embracing the land sought, namely, a United States commissioner, a notary public, a judge, a clerk, or a prothonotary of a court of record, a deputy of such clerk or prothonotary, or a magistrate authorized by the laws of or pertaining to the State to administer oaths; or before any such officer outside the county and the land district embracing the land sought who because of geographic or topographic conditions may be the qualified officer nearest to the land or most accessible from it. In States for which there is no land office, the required oaths may be made before any qualified officer in the State.

(b) The official character of any officer not using a seal of office, other than a manager or an acting manager, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. If, in States for which there is a land office, an oath be administered outside the county and the land district embracing the land sought, the applicant must show by a statement, satisfactory to the Bureau of Land Management, that the oath was made before an officer who because of geographic or topographic conditions was the qualified officer nearest to the land sought or most accessible from it. Such showing, however, will not be required as part of the final proof if the proof be taken in the town or city in which the newspaper printing the final proof notice is published.

(c) The papers in cases arising under the statutes above specified must be filed in the land office for the district embracing the land sought, if there be any such office; otherwise in the Bureau of Land Management in Washington, D.C. An application is not acceptable if dated more than 10 days before being deposited in the mails for filing in the appropriate office.

§ 1821.3–3 Identity of applicant to be established prior to administering oath.

No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

§ 1821.3–4 Attachment of jurat.

No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant.

§ 1821.3–6 Officers qualified to administer oaths in Alaska.

(a) Oaths in public land cases in Alaska may be executed before the manager or the acting manager of the land office for the district in which the lands sought are situated, or before any court, judge, or other officer in the State, or elsewhere in the United States, authorized by law to administer an oath, or before any postmaster in Alaska. (30 Stat. 409, 413, 53 Stat. 1219; 48 U.S.C. 359, 35a–35c)

(b) Except as otherwise provided by an act of Congress, the postmaster is authorized to charge and receive for his services the fees prescribed by law for a notary public for similar services in the State.

(c) The official character of any officer not using a seal of office, other than a manager, an acting manager, or a postmaster, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. Each certificate of oath, affirmation, or acknowledgment executed by a postmaster within the State as provided in this section must be signed by him, with a designation of his title, must have affixed thereto the cancellation stamp of the post office, and must state the name of the post office and the date on which the oath or affirmation is administered or the acknowledgment is taken.

§ 1821.4 Notations on applications.

§ 1821.4–1 Notation of rights-of-way.

(a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, a reference to such right-of-way should be made upon the original entry papers and upon the notice of allowance of the application issued to the entryman.

(b) He will make no such notation upon the final entry papers unless the right-of-way has been granted under an act of Congress which does not in terms protect the grantee against subsequent adverse rights, in which case he will place the same notation as to right-of-way upon the final entry papers, so that the reservation of the right-of-way will be made in the patent, when issued (23 L.D. 67).

§ 1821.4–2 When notation required.

The manager will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty (208 U.S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof by the manager, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

§ 1821.4–3 When notation not required.

(a) The Secretary of the Interior having held, in the case of Dunlap v. Shingle Springs and Placerville R. R. (23 L. D. 67) that "A" railroad right-of-way under the act of March 3, 1875, 18 Stat. 482; 43 U.S.C. 934–939, is fully protected by the terms of the act as against subsequent adverse rights, and a reservation of such right-of-way, in final certificates and patents issued for lands traversed thereby, is therefore not necessary and

should not be inserted" (syllabus), and having on October 16, 1896 denied a motion for review of said decision, the managers will be governed thereby.

(b) The language of the canal and reservoir right-of-way act of March 3, 1891 (26 Stat. 1101, 1102; 43 U.S.C. 946–949), in reference to this matter, being the same as of the act of 1875, the ruling applies to it as well.

§ 1821.5 Entries for lands in more than one land district.

§ 1821.5–1 Governing regulations.

Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 1821.5, 1861.2; 1823.4 (a) and (b).

§ 1821.5–2 Applications and fees to be filed in each office.

Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application should contain a proper reference to the other application.

§ 1821.5–3 Mining claims.

In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well; also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of feees, and the purchase price of the land will be further governed by the provisions of §§ 1861.2 and 1823.4(a).

CROSS REFERENCE: For mining claims, see Subpart 3631 of this chapter.

§ 1821.5–4 Public offerings.

Applications for public offerings under section 2455, Revised Statutes, as amended (43 U.S.C. 1171), cannot be considered unless all the land lies in one land district.

CROSS REFERENCE: For public offerings, see Subpart 2243 of this chapter.

§ 1821.6 Amendments.

§ 1821.6–1 Authority.

Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat. 645; 43 U.S.C. 697), authorizes the amendment of entries and patents for the purpose of correcting errors pertaining to the description of the lands entered and intended to be entered.

§ 1821.6–2 Application to amend; form; where filed.

(a) Application for amendment must be filed in accordance with the provisions of § 1821.2. The application should be substantially in accordance with the for substantially in accordance with the form approved by the director. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be signed by the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

(b) All applications must be accompanied by an application service fee of $10 which will not be returnable.

§ 1821.6–3 Showings required.

(a) *Nature and source of error; good faith.* The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has beeen undue delay in applying for amendment,

the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained.

(b) *Removal of timber.* The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by an adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

(c) *Ownership; deed of reconveyance.* (1) Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the statement of the applicant, corroborated as provided for in paragraph (d) of this section will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other encumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be cellar and free of encumbrance.

(2) Where application for issuance of amended patent is made by the transferee of the original patentee, the new patent may be issued in the name of the transferee. (Instr. Nov. 13, 1925, 51 L.D. 281.) Similarly, patent may be issued to the transferee of the entryman of an unpatented entry which has been amend- before issuance of patent. (Instr. Jan. 22, 1926, 51 L.D. 335.)

(d) *Corroboration.* The statement of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must vertify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

§ 1821.6–4 Publication of notice; statements of witnesses.

Where amendments are allowed of claims upon which final proof has bee submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must submit statements, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

§ 1821.6–5 Amendments in exercise of equitable powers.

(a) The statute to which §§ 1821.6–1 to 1821.6–3(d) refer, does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the Department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert-land law, in any case where it is satisfactorily shown that, through no

fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

(b) Applications for amendment presented pursuant to paragraph (a) of this section will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert-land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6–1 to 1821.6–5(a), and 2226.1–6 (a) of this chapter and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCES: For homesteads, generally, see Subpart 2211 of this chapter. For desert-land entries, see Subpart 2226 of this chapter.

§ 1821.6–6 Entry improperly allowed not to be amended.

Where entries, selections, or locations are improperly allowed, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed, because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

§ 1821.6–7 When amendment becomes effective.

Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

§ 1821.7 Unsurveyed lands; lands within national forests, reservoir sites.

§ 1821.7–1 Applications and selections for, and filings and locations upon, unsurveyed land.

To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, managers will reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to paragraphs (a) to (e) of this section.

(a) It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land

along streams, water courses, or other natural objects will not be permitted.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, a statement must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 30 days. In default of action by the party notified the manager will promptly adjust the claim and report his action to the Bureau of Land Management.

(d) Notice of the application, selection, filing, or location, describing the land as directed in paragraph (a) of this section, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application, selection, filing, or location, as the case may be.

(e) Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of paragraph (a) of this section.

§ 1821.7–2 Application alleging settlement prior to establishment of forest.

When a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, it must be accompanied by a statement in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated. Such statement, must be corroborated by at least one disinterested person.

§ 1821.7–3 Application in conflict with reservoir sites.

(a) The grant for reservoir sites made by sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43 U.S.C. 946–949), is an easement only, and not a fee. The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits in lands covered by such a grant under certain conditions, to the right-of-way grantee, or his or its successor in interest, as provided in Part 3310 of this chapter

(b) An application other than for oil and gas which includes one or more legal subdivisions entirely within the grant of an easement for a reservoir site will be rejected as to such subdivisions. If the application covers legal subdivisions partially within such a grant, it may be allowed as to such subdivisions, in the absence of other objection, subject to the easement.

§ 1821.9 Alaska.

§ 1821.9–1 Applications not to be rejected because executed more than 10 days prior to filing.

Section 1821.2–2 directs managers to reject all applications to make entry which are executed more than 10 days prior to filing. Until such time as the transportation facilities in Alaska are improved the provisions of said section will not be held applicable to applications filed in the district land offices of Alaska.

§ 1821.9–2 Joint action to acquire public lands.

(a) Ten or more persons may file in the proper district land office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U.S.C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U.S.C. 682a), Home-Site Law (48 Stat. 809; 48 U.S.C. 461) and Town-Site Laws (R.S. 2380–2389, as amended, 43 U.S.C. 711–722; 26 Stat. 1099; 48 U.S.C. 355). Each application must be complete in itself except that information common to more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) All claims to specified tracts of land must be initiated in the manner required by law. Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such re-

quirements, signed by each prospective applicant, must be submitted in lieu of an application. Upon compliance with applicable requirements as to residence or otherwise, each such person must file an actual application as required by law.

(c) Each group of applications filed hereunder should be accompanied by two copies of a diagram showing the plan of development contemplated by the applicants. Each such application may describe the land covered by it in terms of a lot or tract as set forth in such diagram or the preliminary diagram specified in this paragraph. The diagram should include specific information as to the relative location and areal extent of each tract or site which it is contemplated will be devoted to school and other municipal or common purposes, to stores or other commercial enterprises, to housing and to agriculture and grazing. Assistance in the preparation of a preliminary diagram, which need not pertain to a particular tract of land, may be obtained by communicating in person or by mail with the United States Department of the Interior, Washington, D.C., 20240. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

(d) Upon the filing of such a diagram by the applicants or their authorized representative, a petition or petitions may be filed requesting the withdrawal of the lands to be devoted to school and other municipal or common purposes.

(e) If any of the applications involve unsurveyed public lands, such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

(f) Persons who propose to file applications in a group under paragraph (a) of this section, by a writing to be filed in the land office, may designate a representative or representatives who may, at their direction and in their behalf, make the actual filing of the applications, previously executed by the applicants and accompanying and supporting documents; pay any or all fees and costs in connection therewith; and, in complete satisfaction of the requirements of § 2211.0–6(a) of this chapter, personally examine the lands sought to be entered and make and file a statement setting forth the information otherwise required of each individual applicant by § 2211.0–6(a) of this chapter.

(g) Where ten or more settlers aer entitled by statute to request and receive a free survey of the lands upon which they have settled, they may file a joint petition stating the facts as to compliance with law by each of them. Such petition must be corroborated by two witnesses having knowledge of the facts.

(h) Where the costs of any survey made under this section are required by statute to be borne by one who seeks the survey, the necessary deposit for costs must be made in accordance. The individual applicant is ultimately responsible in such instances for the costs entailed in satisfying his request for such a survey, but persons who file joint or group petitions for such surveys may share the costs thereof in any proportion they may determine.

This circular supersedes Circulars 2131, 1955, and 1809 in their entirety and the portion of Circulars 2123 relating to §210.1 thru §§210.4 and §210.11, Circular 2032 relating to §295.8, Circular 2001 relating to Part 104, Circular 1978 relating to §205.1, and Circular 1926 relating to Part 101.

GPO 845-228

Repl. by C-2205

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2166]

PART 3220—LEASING UNDER THE REORGANIZATION ACT

Subpart 3221—Prospecting Permits

Subpart 3222—Competitive Leasing

MINERAL LEASING ON ACQUIRED LANDS

1. Paragraph (f) of § 3221.4 is amended to read as follows:

§ 3221.4 Reward for discovery; preference right lease; bond.

* * * * *

(f) The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate will be established by the lessor for such mineral. The lessee will be required to post a lease bond on a form approved by the Director before the lease will be executed by the Government. The lease will be issued for a period not exceeding 20 years, the term to be determined upon the advice of the agency having jurisdiction over the surface and the United States Geological Survey. The lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover. An application for renewal of the lease must be filed in a manner similar to that prescribed for extension of a permit in § 3221.3(a) and the provisions of § 3221.3(b) are applicable to leases.

2. Section 3222.6–2 is amended to read as follows:

§ 3222.6–2 Suspension of operations and production.

(a) Upon a showing of the need and upon application therefor, filed in triplicate in the office of the Regional Mining Supervisor and a copy filed in the proper land office, the lessee may be granted a suspension of the operating and/or producing requirements of the lease. A rental in lieu of royalty of not less than $1 per acre shall be paid annually during the period of suspension. The period of suspension shall be specified in an appropriate order of the Secretary or his authorized representative.

(b) Notwithstanding the provisions of the preceding paragraph, the Secretary, in the interest of conservation of natural resources, may suspend all operating and producing requirements and waive, suspend, or reduce the rental or minimum royalty.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 2, 1964.

[F.R. Doc. 64–10291; Filed, Oct. 8, 1964; 8:47 a.m.]

Published in 29 F.R. 13971, October 9, 1964 - Effective upon publication.

Circular Distribution List

GPO 845-510

Repl. by C-2265

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT
(2000)

[Circular No. 2167]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

EASEMENTS ON REAL PROPERTY

1. Paragraph (a)(1) of § 2234.1–1 is amended to read as follows:

§ 2234.1–1 Scope; definitions.

(a) *Scope.* (1) This section applies to all rights-of-way covered by §§ 2234.1–1 to 2234.1–6; 2234.2–3(a); 2234.2–4; 2234.3–1; 2234.3–2; 2234.4–1; 2234.4–2; 2234.5–1; 2234.5–2; 2234.6; 2234.7.

* * * * *

2. New §§ 2234.7, 2234.7–1, 2234.7–2, 2234.7–3 and 2234.7–4 are added to subpart 2234, to read as follows:

§ 2234.7 Easements on real property.

§ 2234.7–1 Authority.

The act of October 23, 1962 (76 Stat. 1129), authorizes executive agencies to grant easements for rights-of-way or other purposes in, over, or upon real property of the United States under the control of such agencies, to a State or political subdivision or agency thereof, or to any person. The authority conferred by this act is in addition to, does not affect, nor is it subject to, any other law under which an executive agency may grant easements.

§ 2234.7–2 Definitions.

As used in this section of the regulations:

(a) The word "State" means any of the States of the Union.

(b) The word "person" includes any corporation, partnership, firm, association, trust, estate, or other entity.

(c) The term "real property of the United States" excludes the public lands (including minerals, vegetative, and other resources) in the United States, including lands reserved or dedicated for national forest purposes, lands administered or supervised by the Secretary of the Interior in accordance with the act of August 25, 1916 (39 Stat. 535), as amended and supplemented, Indian-owned trust and restricted lands, and lands acquired by the United States primarily for fish and wildlife conservation purposes and administered by the Secretary of the Interior, lands withdrawn from the public domain primarily under the jurisdiction of the Secretary of the Interior, and lands acquired for national forest purposes.

§ 2234.7–3 Applicability of regulations.

(a) The regulations of this section do not apply to any public domain lands, nor to any acquired lands which are administered by the National Park Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs. They are applicable to other acquired lands administered by the Department of the Interior in the States.

(b) Easements shall not be granted under this section if they can be granted under any other section of this subpart.

(c) In addition to meeting the requirements of this section, easements granted under this section shall meet all other requirements in this subpart relating to the use applied for, unless waived by the authorized officer.

§ 2234.7–4 Termination of easement.

(a) All easements granted under this section shall provide for the termination of the easement in whole or in part upon written notice from the authorized officer, to the grantee, or its successors or assigns, if there has been—

(1) A failure to comply with any term or condition of the grant, or

(2) A nonuse of the easement for a consecutive two-year period for the purpose for which granted, or

(3) An abandonment of the easement.

(b) The termination shall be effective as of the date of such notice.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 6, 1964.

[F.R. Doc. 64–10374; Filed, Oct. 12, 1964; 8:46 a.m.]

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Circular Distribution List

GPO 845-511

Repl. by C-2189

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2168]

PART 3210—ACQUIRED LANDS LEASING ACT

Subpart 3210—Acquired Lands Leasing Act: General

Paragraph (a) of § 3212.1 is amended to read as follows:

§ 3212.1 Supplemental information required in offers and applications for leases and permits; place of filing.

(a) Each offer or application for a lease or permit must (1) contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally-owned acquired lands in the same State; (2) be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system), and (3) describe the lands for which the lease or permit is desired as follows:

(i) If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(ii) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(iii) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

(iv) Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

(v) The offeror or applicant must, if practicable, give the name of the administrative unit or project of which the lands applied for are a part.

JOHN A. CARVER, Jr.,
Acting Secretary of the Interior.

OCTOBER 13, 1964.

[F.R. Doc. 64-10615; Filed, Oct. 16, 1964; 8:47 a.m.]

Published in 29 F.R. 14366, October 17, 1964 - Effective 30th calendar day following this publication date.

Circular Distribution List

GPO 845-657

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular 2169]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

TIME LIMIT FOR FILING DOCUMENTS

Section 1821.2–2 is amended by changing the title and the addition of new paragraphs (f) and (g) as follows:

§ 1821.2–2 Time limit for filing documents.

* * * * *

(f) Except when (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

(g) When the regulations of this chapter (except Parts 1840 and 1850) provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

1. The law does not permit him to do so.
2. The rights of a third party or parties have intervened.
3. The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

JOHN A. CARVER, JR.,
Acting Secretary of the Interior.

OCTOBER 15, 1964.

[F.R. Doc. 64–10705; Filed, Oct. 20, 1964; 8:46 a.m.]

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Circular Distribution List

GPO 845-625

Repl. by C-2265

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2170]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

ACQUIRED LANDS IN WILDLIFE REFUGES

1. Paragraph (a)(1) of § 2234.1–1 is amended to read as follows:

§ 2234.1–1 Scope; definitions.

(a) *Scope.* (1) This section applies to all rights-of-way covered by §§ 2234.1–1 to 2234.1–6; 2234.2–3(a); 2234.2–4; 2234.3–1; 2234.3–2; 2234.4–1; 2234.4–2; 2234.5–1; 2234.5–2; 2234.6; 2234.7; 2234.8.

2. New §§ 2234.8, 2234.8–1 and 2234.8–2 are added to Subpart 2234 to read as follows:

§ 2234.8 Acquired lands in wildlife refuges.

§ 2234.8–1 Authority.

Section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s), provides that, subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, the grant of privileges on wildlife refuges may be made upon such terms and conditions as the Secretary shall determine to be for the best interests of government.

§ 2234.8–2 Applicability of regulations.

(a) All the general right-of-way regulations contained in § 2234.1 are applicable to rights-of-way issued under this section, to the extent they are consistent with regulations issued under the Federal Property and Administrative Services Act of 1949.

(b) Easements shall not be granted under this section if they can be granted under any other section of this subpart.

(c) In addition to meeting the requirements of this section, easements granted under this section shall meet all other requirements in this subpart relating to the use applied for, unless waived by the authorized officer.

JOHN A. CARVER, Jr.,
Acting Secretary of the Interior.

OCTOBER 16, 1964.

[F.R. Doc. 64–10757; Filed, Oct. 21, 1964; 8:46 a.m.]

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Circular Distribution List

GPO 845 - 626

Circular No. 2171

Regulations pertaining to:

OCCUPANCY on the PUBLIC LANDS

Homesteads

43 CFR 2211

October 21, 1964

PART 2210—OCCUPANCY

Subpart 2211—Homesteads

Sec.
2211.0–6 Applicants.
2211.0–7 Lands subject to entry.
2211.0–8 Initiation of claims.
2211.0–9 Mortgage loans.
2211.1 Procedures.
2211.1–1 Petitions and applications.
2211.1–2 Showing required of applicant.
2211.1–3 Payments; form of remittance; receipts; notice.
2211.1–4 Proof.
2211.1–5 Amendments; exercise of equitable powers.
2211.2 Requirements for proof.
2211.2–1 Habitable house.
2211.2–2 Residence.
2211.2–3 Cultivation.
2211.2–4 Agricultural entries of withdrawn coal lands.
2211.3 Rights of widows, heirs or devisees.
2211.3–1 On death of settler.
2211.3–2 On death of entryman.
2211.3–3 Heirs of contestants.
2211.4 Additional entries.
2211.4–1 After proof on original claim (act of March 2, 1889).
2251.4–2 For land contiguous to original entry (act of April 28, 1904 as amended).
2211.5 Second entries.
2211.5–1 Former entry lost, forefeited or abandoned (act of September 5, 1914).
2211.5–2 By person who paid price for land ceded by Indians (act of June 21, 1934).
2211.5–3 After commutation or payment of Indian price (acts of June 5, 1900, May 17, 1900 and May 22, 1902).
2211.6 Enlarged homesteads.
2211.6–1 General regulations.
2211.6–2 Petitions and applications.
2211.6–3 Application to enter with petition for designation.
2211.6–4 Additional entry for contiguous lands.
2211.6–5 Additional entries for incontiguous lands.
2211.6–6 Additional entry for double the area of the additional rights.
2211.6–7 Designation of national forest lands as basis for additional entries.
2211.6–8 Non residence homesteads.
2211.6–9 Lands subject to Kinkaid entry.
2211.7 Reclamation homesteads.
2211.7–1 Entries on reclamation withdrawals.
2211.7–2 Loans.
2211.7–3 Leave of absence.
2211.7–4 Assignments; mortgages.
2211.7–5 Rights of widows and heirs of entryman.
2211.7–6 Final proof; final certificates; patents.
2211.8 Flathead Irrigation District, Montana.
2211.8–1 Authority.
2211.8–2 Requirements and limitations on entries.
2211.8–3 Assignment.
2211.8–4 Surveys; plats.
2211.8–5 Mortgages.
2211.8–6 Widows, heirs or devisees of entrymen.
2211.8–7 Proof.
2211.8–8 Final certificates.
2211.8–9 Cancellation of entries.
2211.9 Alaska.
2211.9–1 Homestead settlement entry.
2211.9–2 Application.
2211.9–3 Acreage.
2211.9–4 Qualifications of entryman.
2211.9–5 Residence, cultivation requirements.
2211.9–6 Surveys.
2211.9–7 Proof.
2211.9–8 Loans.

AUTHORITY: The provisions of this Subpart 2211 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2211.0–6 Applicants.

(a) *Examination of land.* (1) Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

(2) As each applicant is required to state that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the statement that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

(b) *Qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(1) Married women, except as stated in paragraph (c) of this section.

(2) Persons who have already made homestead entry, except as stated in §§ 2211.4 to 2211.5.

(3) Foreign-born persons who have not declared their intention to become citizens of the United States.

(4) Persons who are the owners of more than 160 acres of land in the United States.

(5) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(6) Persons who have acquired title to or are claiming, under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres.

(c) *Married women.* A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following classes:

(1) Where she has been actually deserted by her husband.

(2) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(3) Where the husband is confined in a penitentiary and she is actually the head of the family.

(4) Where the married women is the heir of a settler or contestant who dies before making entry.

(5) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for 1 year next before the marriage and neither one abandons the land prior to filing application for entry.

(6) The marriage of an entrywoman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife cannot maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they cannot hold both entries unless they are entitled to the benefits of the act of April 6, 1914, as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167), explained in § 166.62 (38 Stat. 312, 41 Stat. 1193; 43 U.S.C. 167).

(d) *Widows.* A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

(e) *Office holders.* Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

(f) *Insanity of entryman.* Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of 3 years after the date of the entry, he is required to reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

(g) *Adjoining farm entry.* An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

§ 2211.0–7 Lands subject to entry.

All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character, are not occupied for the purposes of trade or business, and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city; but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn under the Reclamation Act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals), are made subject to the particular requirements of the laws under which such lands are opened to entry.

NOTE: Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to homestead settlement or entry until such appropriation is authorized by classification.

§ 2211.0–8 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) Claims under homestead laws may be initiated by settlement on either surveyed or unsurveyed lands of the kind mentioned in the foregoing section. Claims may also be initiated on surveyed lands of that kind by the filing of a soldier's declaratory statement, or by the presentation of an application to enter.

(2) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions.

(b) *Settlement claims.* Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within 3 months after settlement upon surveyed lands or within that time after the filing in the land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost.

(c) *Application for survey of settlement claims.* Application for the survey of unsurveyed lands may be addressed to the Area Administrator having local jurisdiction by any settler or settlers who can show the necessary qualifications. The applicant must show the location of the township by giving its approximate number, range, and meridian; that he is a bona fide settler therein; under what law he wishes to acquire the land; what the character of the land is, and for what it is suitable; the number of the settlers residing upon the land desired to be surveyed; when his residence began and to what extent he has cultivated and improved the land claimed; that his application for survey of the lands described is made in good faith and not at the instance or in the interest or for the benefit of any other person.

CROSS REFERENCE: For Surveys in Alaska, and surveys and resurveys, generally, see Part 9180 of this chapter.

(d) *Alienation of all or part of claim; mortgages; relinquishments.* (1) The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (43 U.S.C. 174), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

(2) A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned. A mortgagee who files notice of his interest in the land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

(3) The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Department of the Interior subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes (43 U.S.C. 164), and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

(4) Relinquishments run to the United States alone, and no person obtains any

right to the land by the mere purchase of a relinquishment of a filing or entry.

(e) *Liability of claim for debts of homesteader.* Under section 2296, Revised Statutes and Public Resolution No. 53, approved April 28, 1922 (42 Stat. 502; 43 U.S.C. 175), lands acquired under the provisions of the homestead laws and laws supplemental thereto and amendatory thereof do not become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

§ 2211.0–9 Mortgage loans.

(a) *Mortgage loans on existing homestead entries.* (1) A homestead entryman desiring a loan on an existing homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Corporation of the Department of Agriculture.

(2) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Corporation. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Corporation.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled homestead entry was closed, the land will become subject to sale by the Farmers Home Corporation.

(b) *Mortgage loans on enlarged homesteads.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b), should proceed in accordance with paragraph (a) of this section.

(c) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

§ 2211.1 Procedures.

§ 2211.1–1 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application together with a petition on forms approved by the Director. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on a form approved by the Director.

§ 2211.1–2 Showing required of applicant.

(a) *General requirements.* Each application to enter and the statements accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual

settlement and cultivation; and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make any agreement or contract in any way or manner with any person, or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

(b) *Indian applicants.* (1) *Certificate required under act of July 4, 1884.* (i) The manager will require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(ii) When such an application is presented without this certificate the manager will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(iii) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

(2) *Where Indian makes entry as citizen.* (i) A certificate from the Commissioner of Indian Affairs that the applicant is entitled, as an Indian, to make a homestead entry, should be required only of applicants under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), from whom no fee or commissions are required.

(ii) If an Indian making application under the general homestead act states that he is a citizen of the United States, the manager will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

(3) *Charges, patents.* The act of July 4, 1884 (23 Stat. 6; 43 U.S.C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the citizen homestead patent is issued on entries made under said act or the act of March 3, 1875 (18 Stat. 420; 43 U.S.C. 189).

(c) *Settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must in addition to the facts required in paragraph (a) of this section state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens; but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

§ 2211.1–3 Payments; form of remittances; receipts; notice.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the manager, or before any other officer authorized to take proofs,

the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

CROSS REFERENCE: For general regulations involving applications and entries, see Subpart 1823 of this chapter. For proofs, see Subpart 1824 of this chapter. For railroad grants see Subpart 2224 of this chapter.

(c) A receipt for the money tendered in connection with an application to enter is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

§ 2211.1–4 Proof.

(a) *Time for making.* (1) Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within 5 years. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

CROSS REFERENCE: For equitable adjudication, see Subpart 2011 of this chapter.

(2) Final proofs in all cases where the same are required by the general land laws or regulations of the Department, should be taken in accordance with the published notice: *Provided, however,* That such testimony may be taken within 10 days following the time advertised in cases where accident or unavoidable delays have prevented that applicant or his witnesses from making such proof on the day specified.

(b) *Officers qualified to take proof.* Final or commutation proofs may be made before any of the officers mentioned in § 1821.3–2 of this chapter as being authorized to administer oaths.

(c) *Notice; publication.* (1) Any person desiring to make homestead proof should first forward a written notice of his desire to the manager of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

(2) The manager will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the manager. The publication must be made once a week for five consecutive weeks, in accordance with § 1824.4 of this chapter.

(3) The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The manager will be responsible for the correct preparation of the notice.

(4) On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

(d) *Who may submit proof*—(1) *General requirements.* Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in §§ 2211.0–6, 2211.1–4(d)(4)(i) and 2211.3–2(a). Final proof can be made only by citizens of the United States.

(2) *Minor orphans of soldiers and sailors.* Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

(3) *When homesteaders intermarry.* (i) Where a homestead entryman or set-

tler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for 1 year, the husband (under the provisions of the act of April 6, 1914 (38 Stat. 312) as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167)) may elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads.

(ii) The act of April 6, 1914, as amended, applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than 1 year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry placed of record before the marriage.

(iii) The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the statements of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and statements be executed in duplicate; then copies of all papers must be filed in each office.

(iv) Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The act of April 6, 1914, as amended, makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed on record in accordance with an approved survey.

(v) If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

(4) *Deserted wife.* (i) The act of October 22, 1914 (38 Stat. 766; 43 U.S.C. 170), provides where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than 1 year, she may submit proof (by way of commutation or otherwise), on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband.

(ii) Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in subdivision (i) of this subparagraph, and all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the manager will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] homestead entryman:

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No. ——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial:

(iii) Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service

is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by statement of the person serving the summons, showing its delivery to the entryman. If personal service cannot be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary statement; proof of such attempted service shall be by a statement of the person mailing the letter, to which should be attached the postmaster's receipts therefor.

(iv) Within 30 days after service of summons, the entryman may file his statement denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

(v) After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the manager will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

(vi) If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the manager, for any reason deemed sufficient, may continue the hearing to a later date.

(*a*) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(*b*) All hearings and subsequent proceedings shall be in accord with Parts 1840 and 1850 of this chapter pertaining to contests.

(vii) If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

(e) *Citizenship requirements.* (1) When proof is submitted it must be shown that the homesteader is a citizen of the United States: *Provided, however,* That a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one (38 Stat. 740; 43 U.S.C. 168).

(2) In all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of the facts concerning the marital status and citizenship in accordance with Subpart 1811 of the chapter.

(3) Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when made in accordance with Subpart 1811 of this chapter.

§ 2211.1–5 Amendments; exercise of equitable powers.

Applications for amendment presented pursuant to § 1821.6–5(a) will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6 and 2226.1–6(a) and on the prescribed form, insofar as the same are applicable. A supple-

mental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCE: For desert-land entries, see Subpart 2226 of this chapter.

§ 2211.2 Requirements for proof.

§ 2211.2–1 Habitable house.

The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

§ 2211.2–2 Residence.

(a) *For 3-year proof.* With the exception of adjoining farm homestead entries and entries allowed under certain laws not requiring residence, a homestead entryman must establish residence upon the tract entered within 6 months after date of the entry, unless an extension of time is allowed, as explained in paragraph (c) of this section and must maintain residence there for a period of 3 years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph (e)(1)(i) of this section.

(b) *For commutation proof.* (1) All original second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(2) The entryman, or his statutory successor, must show that substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 2211.2–3(a), as to 3-year proof.

(3) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding 5 months of which he had given notices as provided by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164).

(4) A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily $1.25 per acre, but is $2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(5) The claimant must show full citizenship, as in case of 3-year proof.

(6) The provisions of law explained in § 2211.2–3(b) apply to commutation proof also.

(7) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 224), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.); entries under the Enlarged Homestead Act (35 Stat. 639; 43 U.S.C. 218); entries allowed on coal lands under the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213); second entries allowed under the act of June 5, 1900 (31 Stat. 269; 43 U.S.C. 217); second entries allowed under the act of May 22, 1902 (32 Stat. 203; 25 U.S.C. 423); when the former entry was commuted; or entries within forests under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509).

(c) *Extension of time to establish.* (1) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence cannot be established on the land within 6 months after the date of the entry, additional time, not exceeding 6 months, may be allowed. An application for such extension must include the statements of the entryman, and two witnesses acquainted with the facts. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

(2) If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first 6 months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(3) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(d) *Reduction in requirements*—(1) *Authority.* The act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the manager of the land office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, but less than 5 of which shall be in each year and proof must be submitted within 5 years.

(2) *To 6 months in each year.* (i) An entryman desiring to avail himself of the privilege accorded by the act of February 25, 1919, must, within 1 year after the allowance of his entry, file in the land office an application (preferably on the approved form) corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as 7 months in each year, and stating whether he wishes the requirement in his case to be fixed at 6 months' residence in 4 successive years or at 5 months' residence in 5 successive years. The statement of claimant and the witnesses need not be sworn to. If the showing is satisfactory, the manager will allow it. If it is not satisfactory, he will reject the application, subject to the usual right of appeal, and all appeals will be forwarded promptly.

(ii) If the application requests a reduction to 5 months' residence in each year, the manager may, if proper, grant partial relief; that is, fix the residence period at 6 months in each year, his decision being subject to review by the Bureau of Land Management on appeal from his decision, of which the party will be notified with all promptness.

(iii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(3) *To 5 months in each year.* (i) Where a homesteader has secured a reduction of the residence requirements to 6 months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to 5 months in each of 5 years.

(ii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(4) *Conditions warranting reduction.* To entitle a homesteader to the benefits of the act of February 25, 1919, he must show that the climatic conditions in the vicinity of the land entered are ordinarily, not in exceptional years, such as would render it a hardship for him to reside there for a greater part of each year than for 5 or for 6 months, as the case may be.

(5) *Residence each year in one continuous period.* Under this provision of the act of February 25, 1919, there is no authority to allow two absence periods, but the 5 months' residence or the 6 months' residence, as the case may be, must be in one continuous period.

(6) *Time for making proof.* (i) Proof on an entry must be made within 5 years after its allowance, notwithstanding the fact that relief may have been granted under the act of February 25, 1919, but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

(ii) An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown, unless a reduction has been granted in the requirements in that regard.

(7) *Credit for military service.* Credit on account of a period of military service will be allowed as on other entries, but at least 1 year's compliance with the homestead laws must be shown in every case.

CROSS REFERENCE: For soldiers' and sailors' homestead and preference rights, see Subpart 2033 of this chapter.

(8) *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by subparagraphs (1) to (7) of this paragraph and who gives notice of the approximate location of the lands settled upon and claimed may be granted the benefits of the act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), providing for prolonged absences due to climatic conditions.

(e) *Absences*—(1) *Up to 5 months.* (i) During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as 5 months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the land office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than 5 months and file notice of his return, he may, without any intervening residence again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

(ii) *On unsurveyed land.* Under the act of July 3, 1916 (39 Stat. 341; 43 U.S.C. 232), a settler upon unsurveyed, unreserved, and unappropriated public land is entitled to one or two leaves of absence during each residence year, aggregating not more than 5 months in each year, after establishing of residence, in the same manner and upon the same conditions as persons having entries of record. If he has returned after an absence of less than 5 months and filed notice of his return, he may, without any intervening residence, again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

(iii) *Notice of settlement claim.* The act of July 3, 1916, does not authorize the filing of a notice of a settlement claim except as included in a notice of absence from the land; unless the paper tendered shows the beginning or ending of an absence, the manager will decline to receive it.

(2) *For 1 year.* (i) Leave of absence for 1 year or less may be granted by the manager of the land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be signed by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted cannot be counted in his favor.

(ii) All applications for leave of absence for one year or less because of failure of crops, sickness, or other unavoidable casualty must be accompanied by an application service fee of $5 which will not be returnable.

(f) *Contest.* Where a contest is initiated against an entry, prior to filing of notice to submit communication proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended (43 U.S.C. 164, 169), and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment cannot be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 234), or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

§ 2211.2–3 Cultivation.

(a) *For 3-year proof.* (1) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

(2) During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. The required area of cultivation may be reduced, under certain conditions, as set forth in paragraph (b) of this section. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in subparagraphs (1) to (3) of paragraph (b) of this section.

(b) *Reduction of requirements.* (1) The requirements as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction must be filed at the proper land office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(2) A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice of the misfortune and of its nature must be submitted to the manager of the land office, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(3) No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman cannot reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made

in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area.

(4) Applications for reduction in area of cultivation will be acted upon by the manager of the land office, who may in appropriate cases defer action until final proof, but his decision in granting or refusing applications for reduction in area shall be subject to review, upon appeal, by the Director, Bureau of Land Management and by the Secretary of the Interior.

(5) All applications for reduction in area of cultivation must be accompanied by an application service fee of $5 which will not be returnable.

(c) *Elimination of requirements.* (1) The act of March 31, 1938 (52 Stat. 149; 43 U.S.C. 237d), amended the act of August 19, 1935 (49 Stat. 659), so as to extend its provisions to applications made prior to February 5, 1935. As amended the act provides that, with certain specified exceptions, described in subparagraph (3) of this paragraph, the provisions of the homestead laws requiring cultivation of the land entered shall not be applicable to existing homestead entries made prior to February 5, 1935, or thereafter if based upon valid settlement or application made prior to said date, and no patent shall be withheld for failure to cultivate such lands.

(2) In all cases where said acts apply, no proof shall be rejected solely for failure to show that the cultivation requirements of the homestead laws have been complied with.

CROSS REFERENCE: For proofs, see Subpart 1824 of this chapter.

(3) The law does not apply to homestead entries made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), and amendment thereof, known as the reclamation law; or under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), and amendments thereof, known as the law providing for entry of agricultural lands within national forests; or to homestead entries in the State of Alaska.

§ 2211.2–4 Agricultural entries of withdrawn coal lands.

The act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and the act of June 25, 1910, was not intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, and as to such lands certain nonmineral entries may be allowed, as provided for by the act of June 22, 1910, notwithstanding their withdrawal under act of June 25, 1910.

CROSS REFERENCE: For agricultural entries on mineral lands, see Subpart 2023 of this chapter.

§ 2211.3 Rights of widows, heirs or devisees.

§ 2211.3–1 On death of settler.

(a) If a homestead settler dies without having filed application for entry, the right to enter the land covered by his settlement passes to his widow. If there be no widow, said right passes to his heirs or devisees.

(b) Persons who make entry as the widows, heirs, or devisees of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the time during which the settler resided on and cultivated the land, will make the required period of 3 years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs, devisee, or widow, or in part by the settler and in part by the widow, heirs, or devisee.

§ 2211.3–2 On death of entryman.

(a) If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

(b) Persons succeeding as widow, heirs, or devises to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of 3 years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

§ 2211.3–3 Heirs of contestants.

If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancelation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

§ 2211.4 Additional entries.

§ 2211.4–1 After proof; on original claim (act of March 2, 1889).

(a) *Statutory authority.* Section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received the managers final receipt for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land originally entered by him, as shall not with it exceed a total of 160 acres.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 6 of the Act of March 2, 1889, must comply with the provisions of § 2211.1. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

(c) *Residence, cultivation, and proof required.* Upon allowance of the additional entry, entrymen will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and within the period prescribed by statute, to submit proof of such resi-

dence and cultivation as in other homestead cases.

§ 2211.4–2 For land contiguous to original entry (act of April 28, 1904 as amended).

(a) *Authority.* Section 2 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), as amended by the act of August 3, 1950 (64 Stat. 398; 43 U.S.C. 213) authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional lying contiguous to the original entry which, with the land first entered and occupied will not in the aggregate exceed 160 acres. Section 3 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), prohibits the submission of commutation proof of an entry made under that act.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 2 of the act of April 28, 1904, must comply with the provisions of § 2211.1–1. In addition, he must file with the prescribed form or forms a reference to the act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

(c) *Final proof.* Before proof may be submitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry.

The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

(d) *Cancellation of original entry.* An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

§ 2211.5 Second entries.

§ 2211.5–1 Former entry lost, forfeited or abandoned (act of September 5, 1914).

(a) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries.

(b) The question whether the first entry, or entries, were made before or after the passage of the act of September 5, 1914 is entirely immaterial. Moreover, it will be seen that the act imposes upon the Bureau of Land Management the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911 (36 Stat. 896) limiting its benefits to a clearly defined class of persons.

(c) In order that the Bureau of Land Management may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper land office an application to enter a specific tract) furnish his statement showing the following facts:

(1) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township and range.

(2) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and,

in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(3) With reference to a homestead entry, whether he established residence upon the tract, and, if so how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and, if so, how long he continued to exercise acts of ownership thereover.

(4) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(5) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(6) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

(d) The statement described in the preceding section must be signed by the applicant and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; statements of witnesses must be signed by them. Appropriate blank forms will be furnished by the managers.

§ 2211.5–2 By person who paid price for land ceded by Indians (act of June 21, 1934).

(a) Statutory authority. (1) Under the act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a), any person who theretofore had made entry under the homestead laws on any lands embraced within any reservation ceded to the United States by the Indian tribes, and had paid for his land the sum of at least $1.25 per acre, upon proof of such facts, if otherwise qualified, is entitled to the benefit of the homestead law as though such former entry had not been made. The provisions of said act do not apply to any person who has failed to pay the full price for his former entry or whose former entry was canceled for fraud. In making any new homestead entry as authorized by said act or the prior similar acts of February 20, 1917 (39 Stat. 926), and February 25, 1925 (43 Stat. 981; 43 U.S.C. 187), such entry may not include any land to which the Indian title has not been fully extinguished.

(2) The act of June 21, 1934, has no application if the first entry be canceled. Such cases will be governed by the general statutes allowing second entries.

(b) *Showing as to prior entry.* A person claiming the right of second homestead entry pursuant to the provisions of the act of June 21, 1934, must furnish a description of the land included in his perfected entry or data from which it can be identified, and he must state that he paid $1.25 or more per acre for the tract, but it is not necessary that he name the precise price paid. If the former entry embraced tracts appraised at less than $1.25 per acre and tracts appraised at more than $1.25 per acre, a second entry hereunder is not allowable unless the aggregate sum of the appraised prices of the former entry equals $1.25 per acre or more.

(c) *Requirements as to completion of prior entry.* A second entry is not allowable unless the first entry was made prior to June 21, 1934, and unless satisfactory final proof has been submitted thereon and the entire price of the land included therein has been paid prior to the date of the application for second entry.

(d) *Laws under which second entry rights may be exercised.* A person who is entitled to the benefits of the act of June 21, 1934, may at his option make second entry under either the general homestead law, or the Enlarged Homestead Act. Compliance with the law must be shown as though it were an original entry.

CROSS REFERENCE: For enlarged homesteads, see § 2211.6.

(e) *Land not subject to second entry.* The act of June 21, 1934, prohibits the allowance of any application to make a second homestead entry thereunder or under the act of February 20, 1917, or the act of February 25, 1925, if it includes any land to which the Indian title shall not have been fully extinguished.

§ 2211.5–3 After commutation or payment of Indian price (acts of June 5, 1900, May 17, 1900 and May 22, 1902).

Where a person commuted a homestead entry before June 5, 1900, or paid the Indian price of the land entered before May 17, 1900, his homestead right

is restored. See acts of June 5, 1900, and May 22, 1902 (sec. 2, 31 Stat. 269; 43 U.S.C. 217, and sec. 2, 32 Stat. 203; 25 U.S.C. 423), and the act of May 17, 1900 (31 Stat. 179; 25 U.S.C. 421).

§ 2211.6 Enlarged homesteads.

§ 2211.6–1 General regulations.

(a) *States affected; character of land.* (1) The act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218) (extended by later legislation to additional States), and the act of June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

(2) The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as dry farming, and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

(3) Lands containing merchantable timber, or valuable minerals other than coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Entry may be allowed for the surface only of lands containing any of the minerals named. A legal subdivision will not be regarded as irrigable and excluded from designation under these acts because a minor portion of it is susceptible of irrigation unless said portion is at least one-eighth thereof. Where there is an application for additional entry after submission of final proof on the original the land covered by the original will not be regarded as irrigable, and excluded from designation, upon the ground that more than one-eighth of any subdivision is irrigable, unless said original embraces the equivalent of 20 or more acres of land in a reasonably compact body that can be thoroughly irrigated and reclaimed.

(4) A tract included in an entry under the Enlarged Homestead Acts or in any entry under the general law, and an additional entry under said acts, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said acts.

(5) An original entry under the Enlarged Homestead Acts may not exceed one and one-half miles in extreme length (47 L.D. 370).

(b) *Initiation of settlement claims under enlarged homestead law.* Under the act of August 9, 1912 (37 Stat. 267; 43 U.S.C. 166, 223), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

§ 2211.6–2 Petitions and applications.

(a) A person who desires to enter public lands under the enlarged homestead laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application should be filed. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana, and petitions for lands in Kansas must be filed in the land office at Cheyenne, Wyoming.

(b) Any person qualified to make an original homestead entry for 160 acres is qualified to make entry under the Enlarged Homestead Acts for 320 acres.

(c) When a homesteader applies to make entry, he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of

$25. A successful contestant for the lands pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof can be accepted or approved until all charges have been paid.

(d) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2211.6–3 Application to enter with petition for designation.

(a) *Act of March 4, 1915.* (1) Under the act of March 4, 1915 (38 Stat. 1162; 43 U.S.C. 220), a person may file an application for entry under the Enlarged Homestead Act of a tract of surveyed land which has not been designated thereunder, accompanied by a petition for its designation, or he may file application for additional entry though part of the land involved has not been designated, accompanied by like petition. He thus secures a preference right of entry if the land be thereafter designated. An additional entry cannot be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore petitions should in all cases cover so much of both tracts as has not already been designated.

(2) The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who in good faith has acted upon such designation. Each entryman must furnish a statement giving the information required by section 2 of the Enlarged Homestead Acts.

(3) The act of March 4, 1915, applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

(b) *Execution of application.* (1) Where a preference right under the act of March 4, 1915, is sought there must be filed at the proper land office the usual application for entry, original or additional, as the case may be, signed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's statement, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved, both tracts, if additional entry is sought.

(2) This statement which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(3) In case of applications for entry under sections 1 to 5, commonly known as the general provisions of the Enlarged Homestead Act, the statement should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

(i) The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon, such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and

reclaim the tract, or if it had been included in a desert-land entry, the reasons for lack of success should be stated.

(ii) The statement should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(4) In cases of applications for entry under section 6 of the Enlarged Homestead Acts, applicable to Utah and Idaho, the statement should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and other pertinent facts as to wells situated either in the vicinity of the tract or nearest thereto, and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

(i) If the tract has not theretofore been designated under sections 1 to 5 of the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under sections 1 to 5, as explained in this section.

(5) The filing of a statement, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the State Director to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the Enlarged Homestead Act under which the claim is filed.

(c) *Segregative effect of application.* No other appropriation of the land will be allowed before the application has been finally disposed of. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

§ 2211.6–4 Additional entry for contiguous lands.

(a) *Before proof on original claim.* (1) Under section 3 of the Enlarged Homestead Acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been designated for entry under those acts, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional. Credit for compliance with the law as to additional entry may be allowed from the date of the filing of the application to enter.

(2) Where a person makes entry under the general provisions of the homestead laws, and before submission of proof on said entry makes an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof.

(3) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for 1 year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in § 2211.2–3 (b) of this chapter are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(4) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for 1 year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If culti-

vation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i.e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than 7 years from the date of the original entry.

CROSS REFERENCE: For proofs, see Subpart 1824 of this chapter.

(b) *After proof on original claim (act of March 3, 1915).* (1) The act of March 3, 1915 (38 Stat. 956; 43 U.S.C. 218, 219), amends sections 3 and 4 of the Enlarged Homestead Acts of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), and June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

(2) *Who may make additional entry; additional information required.* The act of March 3, 1915, confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. It should be observed that no change has been made in the requirement of the law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other. Where a person desires to make an entry under the Act of March 3, 1915, he must file in addition to the form or forms required by § 2211.6–2 (a) and (b) a statement showing continued ownership and occupancy of the land first entered, and a statement setting forth the character of the land in both tracts. These statements together with the required forms will be considered as a petition for designation under the enlarged homestead laws.

(3) *Residence.* The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the 5-year or the 3-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(4) *Cultivation.* The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under the act of March 3, 1915. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within 5 years after the date of the additional entry.

CROSS REFERENCE: For cultivation requirements, see §§ 2211.2–1 to 2211.2–2 and 2211.2–3(b) and (c).

§ 2211.6–5 Additional entries for incontiguous lands.

(a) *Acts of July 3, 1916 and Sept. 5, 1916.* Under section 7 of the Enlarged Homestead Acts, added thereto by the act of July 3, 1916 (39 Stat. 344; 43 U.S.C. 218), and the act of September 5, 1916, (39 Stat. 724; 43 U.S.C. 219), a person who has submitted final proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted.

(b) *20 Mile Limitation.* A qualifed person who owns and continues to reside on his original entry may make entry for two or more incontiguous tracts within 20 miles of his original entry, if unable to secure in one tract the entire area he is entitled to enter; but one who no longer owns his original entry, or

who seeks land not within 20 miles therefrom, can not be allowed to enter incontiguous tracts under this act.

(c) *Conditions under which additional entry may be made.* Section 7 of the Enlarged Homestead Acts has no application unless the first entry was made in one of the States where the Enlarged Homestead Act is in force, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incontiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

(d) *Qualifications required of applicant.* The only qualifications required of an applicant under section 7 of the Enlarged Homestead Acts are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

(e) *Designation of original and additional tracts.* It is not necessary that any of the land be designated under the Enlarged Homestead Act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for designation of the undesignated land, as provided by the act of March 4, 1915 (38 Stat. 1162; 43 U.S.C. 220), and separate petitions must be filed for the different tracts if both be undesignated.

(f) *Showing required for proof.* (1) There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

(2) In the proof, to be submitted within 5 years after the date of additional entry, there must be shown residence on the additional tract, or on the original, if permitted under the 20-mile exception above explained, for not less than 3 years, subject to the privilege of being absent 5 months in each year, as provided by the 3-year homestead law; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry, and of not less than one-eighth of its area during the third year and until submission of proof; but residence and cultivation for the requisite period after the date of the application and until the submission of proof will be accepted. Credit for military service will be allowed as in other cases.

(g) *Showing required in petition for designation.* (1) As in other cases, a petition for designation, filed in connection with an entry under section 7 of the Enlarged Homestead Acts, must consist of a statement, signed in duplicate by the applicant and at least two witnesses, setting forth a description by legal subdivisions of all the land involved, its character, and the conditions governing the irrigability of both tracts.

(2) If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either

ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(h) *Entries under section 6 of Enlarged Homestead Act.* The provisions of the acts of July 3 and September 5, 1916, do not apply to entries under section 6 of the Enlarged Homestead Act.

§ 2211.6–6 Additional entry for double the area of the additional rights.

(a) *Act of February 20, 1917.* The act of February 20, 1917 (39 Stat. 925; 43 U.S.C. 215), permits a person who has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, to enter under the Enlarged Homestead Act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated.

(b) *Designation required of additional tract.* The act of February 20, 1917, permits an additional entry under the Enlarged Homestead Act to be made for a tract designated as subject thereto, although the land included in the applicant's perfected entry be not thus designated; it is immaterial whether he owns the original tract, and the additional tract may be contiguous thereto or at any distance therefrom.

(c) *Description required of all former entries.* The application must contain a description of all entries theretofore made by the applicant or such data as will serve to identify them.

(d) *Area of additional right.* Under section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), a person who has partially exhausted his homestead right through a perfected entry is entitled to make an additional entry for so much land as will with the area of the completed entry make 160 acres. The act of February 20, 1917, supplements that legislation by providing that the additional land, if designated under the Enlarged Homestead Act, shall be estimated at only one-half its actual area in the calculation under the act of March 2, 1889. To illustrate: If the person has obtained title to 40 acres, he may make additional entry for not exceeding 240 acres of enlarged homestead land, that is, twice 120; if he has had 80 acres, he may still take 160 acres of such land; if he has had 120 acres, he may now take an additional 80 acres.

(e) *Petition for designation.* In connection with an application pursuant to the provisions of the act of February 20, 1917, a petition for designation of the land sought may be filed as provided in other cases of applications under the Enlarged Homestead Act, and the proceedings with relation to the application and petition will be as in other cases.

(f) *Right to additional area, when application cannot be allowed under section 3 or 7 of Enlarged Homestead Act.* Where an application is filed for additional entry under either section 3 or section 7 of the Enlarged Homestead Act, and the Secretary of the Interior or other authorized officer refuses to designate thereunder the tract included in the original perfected entry, the application may be allowed for so much of the land sought as the claimant is entitled to enter under the act of February 20, 1917, provided said land be designated as subject to the Enlarged Homestead Act.

(g) *Showing required for proof.* In proof on an entry allowed pursuant to the provisions of the act of February 20, 1917, there must be shown the existence of a habitable house upon the land entered and the usual residence and cultivation. Residence must be for not less than 3 years, subject to the privilege of being absent 5 months in each year, in two periods if desired. There must be cultivation of not less than one-sixteenth of the land entered during the second year after the date of the entry, and not less than one-eighth of its area during the third year and until submission of proof. However, credit for military service will be allowed as in other cases. Proof must be submitted within 5 years after the date of the entry.

§ 2211.6–7 Designation of national forest lands as basis for additional entries.

(a) *Act of March 4, 1923.* By act of March 4, 1923 (42 Stat. 1445; 43

U.S.C. 222), provision has been made whereby the Secretary of the Interior may designate under the Enlarged Homestead Act national forest lands embraced in subsisting or perfected homestead entries of 160 acres or less so that such forest homestead entries may be the basis for additional entries under said act.

(b) *Intent and purpose of act of March 4, 1923.* The intent and purpose of the act of March 4, 1923, is to permit persons holding existing or perfected homestead entries for lands within national forests of a character subject to designation which the applicant owns and on which he resides, to make additional entries for such a quantity of land outside of the national forest and within 20 miles of the original entry as when added to the area of the original entry will not exceed 320 acres, if under section 1 thereof.

(c) *Procedure for entry and proof.* The procedure in making and perfecting an entry under section 1 of the act of March 4, 1923, will be in all respects similar to that explained in §§ 2211.6–1 to 2211.6–4, covering additional entries under the Enlarged Homestead Acts, the only difference being that at the time of making the entry hereunder after proof on an original entry, the applicant must show ownership of and residence on the land in the original entry, instead of ownership and occupancy, and an additional hereunder may be made for land not adjourning that in the original entry. Residence on the original entry may be credited on both entries, but cultivation of the land in the additional entry must be as indicated in § 2211.6–4(a).

§ 2211.6–8 Nonresidence homesteads.

(a) *In Utah.* (1) The sixth section of the act of February 19, 1909 (35 Stat. 640; 43 U.S.C. 218), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act.

(2) During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. This requirement is made by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 218). Proof may be submitted on entries of this class within 7 years after their dates.

(3) The rules relating to petitions for designation of lands apply to section 6 of the enlarged Homestead Act.

(b) *In Idaho.* The sixth section of the act of June 17, 1910 (36 Stat. 531, as amended by the act of August 10, 1917 (40 Stat. 275; 43 U.S.C. 219), provides that 1,000,000 acres of land in the State of Idaho which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon them possible, may be designated by the Secretary as subject to entry thereunder, without the necessity of residence upon such lands, by the entryman. One: sixteenth of the cultivatable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho."

§ 2211.6–9 Lands subject to Kinkaid entry.

(a) *Size of entry.* (1) It is directed by the act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 24) commonly known as the Kinkaid Act, that in that portion of the State of Nebraska lying west and north of the line described therein, upon and after June 28, 1904, except for such lands as might be thereafter and prior to said date excluded under the proviso contained in the first section thereof, homestead entries may be made for and not to exceed 640 acres, the same to be in as nearly a compact form as possible, and must not in any event exceed 2 miles in extreme length.

(2) While the Kinkaid Homestead Act authorizes original homestead entries for not exceeding 640 acres, and additional entries for an area sufficient with the area of the originals to make

up 640 acres, the maximum area of land withdrawn by E. O. 6964, Feb. 5, 1935 which may be entered under said act and section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f) is 320 acres. See Subpart 2411 of this chapter.

(b) *Additional entry contiguous to original; ownership and occupancy of original required.* (1) Under the provisions of the second section of the act of April 28, 1904, as amended by section 7 of the act of May 29, 1908 (35 Stat. 466; 43 U.S.C. 224), a person who within the described territory has made entry prior to May 29, 1908, under the homestead laws of the United States, and who owns and occupies the lands theretofore entered by him, and is not otherwise disqualified, may make an additional entry of a quantity of land contiguous to his said homestead entry, which, added to the area of the original entry, shall make an aggregate area not to exceed 640 acres; and he will not be required to reside upon the additional land so entered, but residence continued and improvements made upon the original homestead entry subsequent to the making of the additional entry will be accepted as equivalent to actual residence and improvements on the land covered by the additional entry. But residence either upon the original homestead or the additional land entered must be continued for the period of 3 years from the date of the additional entry, except that entrymen may claim and receive credit on that period for the length of their military service, not exceeding 2 years.

(2) Such additional entry must be for contiguous lands, and the tracts embraced therein must be in as compact a form as possible; and the extreme length of the combined entries must not in any event exceed 2 miles.

(3) In accepting entries under the act of April 28, 1904, compliance with the requirements thereof as to compactness of form should be determined by the relative location of the vacant and unappropriated lands, rather than by the quality and desirability of the desired tracts.

(c) *Additional entry contiguous or incontiguous to original; ownership and occupancy of original not required.* By the first proviso of section 3 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224), any person who made a homestead entry either within the Kinkaid territory or elsewhere prior to his application for entry under this act, if no other disqualification exists, will be allowed to make an additional entry for a quantity of land which, added to the area of the land embraced in the former entry, shall not exceed 640 acres, but residence upon and cultivation of the additional land will be required to be made and proved as in ordinary homestead entries. But the application of one who has an existing entry and seeks to make an additional entry under said proviso can not be allowed unless he has either abandoned his former entry or has so perfected his right thereto as to be under no further obligation to reside thereon; and his qualifying status in these and other respects should be clearly set forth in his application.

(d) *Second entry.* Under the act of April 28, 1904, no bar is interposed to the making of second homesteads for the full allowable area by parties entitled thereto under existing laws, and applications therefor will be considered under the instructions of the respective laws under which they are made.

(e) *Proof*—(1) *Time.* A person who has a homestead entry upon which final proof has not been submitted, and who makes additional entry under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224), will be required to submit his final proof on the original entry within the statutory period therefor, and final proof upon the additional entry must also be submitted within the statutory period from date of that entry.

(2) *Improvements required.* Upon final proof, which may be made after 3 years and within 5 years from date of entry, the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than $1.25 per acre for each acre, and such proof must also show residence upon and cultivation of the land for the 3-year period as in ordinary homestead entries, but credit for military service may be claimed and given.

(3) *Form.* In the making of final proofs the homestead-proof form will be used, modified when necessary in case of additional entries made under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224).

(4) *Payments required; form of remittances.* (i) When a homesteader applies to make entry, he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(ii) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(f) *Commutation prohibited.* Entries under the act of April 28, 1904, are not subject to the commutation provisions of the homestead law.

§ 2211.7 Reclamation homesteads.

§ 2211.7–1 Entries on reclamation withdrawals.

(a) *Effect of reclamation withdrawals.* (1) Section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), provides for the withdrawal of lands from all disposition other than that provided for by said act. Since the passage of the act of June 25, 1910 (36 Stat. 835; 43 U.S.C. 436, 437), lands withdrawn as susceptible of irrigation are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by an authorized officer, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law. The Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto are hereinafter referred to generally as the reclamation law.

(2) Under the provisions of the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), the prohibition contained in section 5 of the act of June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm-unit plats and the announcement of the fact that water is ready to be delivered to the land, is set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

(b) *Provisions governing reentries.* (1) Settlement and entry of such lands will be allowed subject to the provisions of the homestead law and the reclamation law in the same manner as for other lands subject to entry within reclamation projects except that the certificate of the official in charge of the project that water-right application has been made and charges deposited, which must be filed in the ordinary case, is not required. See paragraph (c) of this section. The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present act in cases where a relinquishment of the former entry has been or shall be filed.

(2) Entries are permitted under the act of February 18, 1911, as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), upon the relinquishment of an entry made prior to June 25, 1910, and the right to enter such land is not limited to one or more entries or entrymen.) Lena Hektner, 42 L.D. 462.) This act has no application where the cancellation of the entry made prior to June 25, 1910, was the result of a contest or of a relinquishment resulting from the same. (Fred V. Hook, 41 L.D. 67.) The act is also inapplicable in the case of lands withdrawn under the first form and has reference only to lands covered by second-form withdrawals. (Annie G. Parker, 40 L.D. 406.)

(c) *Homestead entries in reclamation projects.* Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry and managers will allow

homestead applications for such lands, if found regular, and accompanied by a certificate of the official in charge of the project showing that water-right application has been filed and the proper water-right charges deposited and that the applicant has qualified under subsection C of section 4 of the act of December 5, 1924 (43 Stat. 702; 43 U.S.C. 433). No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the official in charge. Where under the reclamation law lands within the reclamation project are subject to entry notwithstanding public notice covering said lands has not yet issued, such certificate of the official in charge is not required, and in such cases the application, if otherwise regular, will be received and entry allowed. The manager will immediately notify the official in charge of each entry allowed, stating whether the entry was allowed with or without the certificate of the official in charge above referred to.

CROSS REFERENCE: For lands in State irrigation districts, see Subpart 2253 of this chapter.

(d) *Subdivision of farm unit.* (1) An entry may be made of part of an established farm unit (a) when the remaining portion of said unit is also desired for entry simultaneously by another person and is, in the judgment of the official in charge of the project, sufficient, if carefully managed, to return to the reclamation fund the charges apportioned to the irrigable area thereof, or (b) can be advantageously included as part of an established farm unit, or (c) can in combination with existing farm units be advantageously replatted into new farm units, each sufficient, if carefully managed, to support a family and return to the reclamation fund the charges apportioned to the irrigable area of the several new farm units.

(2) Where it is desired to make entry of part only of a farm unit, an application for the amendment and subdivision of such unit should be filed with the official in charge of the project. If such subdivision is rectangular and survey is not required to determine the division of the irrigable area of the farm unit as proposed to be divided, no charge will be made. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit or the division of the irrigable area, the official in charge will proceed as directed in § 2211.7–4(a)(4). Upon such application being filed, the official in charge will either approve or disapprove the same, and, if approved, proceed as directed in § 2211.7–4(a)(5).

(3) The farm units may be as small as 5 acres where the lands are suitable for fruit raising, etc., but as a rule they are fixed at from 40 to 160 acres each. These areas are announced on farm-unit plats, and public notice stating the amount of the charges and other details concerning payment is issued by the authorized officer. Until this public notice is issued it is impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice.

(e) *Additional entries.* A person who has made homestead entry for any area within a reclamation project, cannot make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project. (38 L.D. 58.)

(f) *Notices to project managers.* Notice of all action in the land office or in the Bureau of Land Management regarding any entry for which water-right application has been made, or may be made, whether subject to the reclamation law or not, shall be given immediately by the manager to the official in charge of the project by the forwarding of copy of decision in the case. The official in charge shall advise the manager of all action regarding any water-right application or contract by the Bureau of Reclamation affecting the status or validity of the homestead or desert-land entry covering the land. Among the several actions of which the manager is especially directed to notify the official in charge, are:

(1) Allowance of entries.

(2) Conformation of entries to farm units.

(3) Cancellation of entries.

(4) Applications for reinstatement of entries.

(5) Acceptance of final proof.

(6) Issuance of final certificate.

(7) Issuance of patent.

(8) Acceptance or rejection of assignments under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441).

(9) Contest against entries, granting leave of absence, death or disability of entryman, or any other actions materially affecting the entry, or affecting land under reclamation withdrawal.

(g) *Contests*—(1) *Rights of successful contestants.* An entry embracing lands included within a first- or second-form reclamation withdrawal, whether such entry was made before or after the date of such withdrawal, may be contested and canceled because of entryman's failure to comply with the law or for any other sufficient reason, except that for failure to pay for construction charges or charges for operation and maintenance no contest will lie, and any contestant who secures the cancellation of such entry and pays the land-office fees occasioned by his contest will be awarded a preferred right of making entry. Should the land embraced in the contested entry be within a reclamation withdrawal at time of successful termination of the contest, the preferred right may prove futile, for it cannot be exercised as long as the land remains so withdrawn, but should the lands involved be restored to the public domain or a farm-unit plat be approved for the lands and announcement made that water is ready to be delivered, the preference right may be exercised at any time within 30 days from notice of the restoration or the establishment of farm units. It should be the duty, however, of such contestant to keep the manager advised respecting his residence to which notice may be sent him of his preference right of entry in event of successful contest, when the land is subject to entry, and a notice mailed to his address, shown by the records of the land office at the time of the mailing of the notice of preference right, will be held to meet the requirements of the act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 185). No contest can be allowed, however, against any qualified entryman who prior to June 25, 1910, made bona fide entry upon lands proposed to be irrigated and who established residence in good faith upon the lands entered by him for failure to maintain residence or to make improvements upon his land prior to the time when water is available for its irrigation.

(2) *When contests are allowable.* Under the regulations in subparagraph (1) of this section and in this subparagraph, the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(i) Where the entry was made on or after June 25, 1910.

(ii) Where the entry was made prior to June 25, 1910, and it is alleged that the entryman failed to establish residence in good faith upon the lands entered by him.

(iii) Where the entry was made prior to June 25, 1910, and a period of 90 days has elapsed since the issuance of public notice under section 4 of the Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the date when water will be available for irrigation of the land.

(iv) Where the entry was made prior to June 25, 1910, for any causes other than "failure to maintain residence or make improvements upon the land prior to the time when water is available."

(h) *Exchanges*—(1) *Applications for exchange.* The act of March 4, 1915 (38 Stat. 1215; 43 U.S.C. 447), provides for the exchange of lands included in pending entries, for other lands in the same project, under certain conditions. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and a statement by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

(2) *Conditions permitting exchange; act of March 4, 1915.* The act of March 4, 1915, permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land

has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the Department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

(3) *Conditions permitting exchange; other acts.* Other exchanges within reclamation projects under certain conditions, have been authorized, as indicated below:

(i) The act of August 13, 1953 (67 Stat. 566; 43 U.S.C. secs. 451–451k), provides for the exchange of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(ii) Section 44 of the act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c) authorizes exchanges of unpatented entries and private lands for other public lands within the same project or any other Federal reclamation project.

(iii) Departmental orders of May 10, 1922 and July 31, 1924, permit the exchange of unpatented and patented land and water-right entries under the act of January 25, 1917 (39 Stat. 868) in Part One, Mesa Division, Yuma Irrigation Project, Arizona.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–2 Loans.

(a) *Mortgage loans on existing reclamation homestead entries.* (1) A reclamation homestead entryman or a recognized assignee thereof desiring a loan on an existing reclamation homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C., Supp. III secs. 1006a, 1006b), should consult the Farmers Home Corporation of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior.

(2) Where a reclamation homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land would be subject to reclamation homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished. An applicant for such land should first consult the Farmers Home Corporation and the Bureau of Reclamation. Such a reclamation homestead application must not be filed in the land office until the applicant has been selected by the Farmers Home Corporation and the Bureau of Reclamation, and he has been directed by the Farmers Home Corporation to file the application.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the reclamation homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling reclamation homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the reclamation or homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled reclamation homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled reclamation homestead entry was closed, the land will become subject to disposition by the Secretary of Agriculture.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–3 Leave of absence.

(a) *Showing required.* (1) Applications for leave of absence should be duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set

forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof. The statement regarding the availability of water for irrigation must be corroborated by certificate of the official in charge of the project, to be filed with the application for leave.

(2) All applications for leave of absence within Federal irrigation projects under the act of June 25, 1910, must be accompanied by an application service fee of $5 which will not be returnable.

(b) *Period of leave.* When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

(c) *Effect of granting leave.* Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment, and by the necessary implication of the act the period within which the entryman is required to submit final proof will be extended and the entry will not be subject to cancellation for failure to submit proof until the expiration of the period allowed in which to submit final proof, exclusive of the period for which leave of absence may be granted. Under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), no qualified entryman for lands within a reclamation project whose entry was made prior to June 25, 1910, and who established residence in good faith upon the lands so entered shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time public notice is issued fixing the water-right charges and announcing that water is available for the irrigation of the land embraced in his entry. Within 90 days after the issuance of public notice under section 4 of the act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the water-right charges and announcing the date when water will be available for irrigation, the entryman must file water-right application for the irrigable land in his entry in conformity with the public notice and farm-unit plate, and must file in the land office a statement showing that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–4 Assignments, mortgages.

(a) *Assignments*—(1) *When assignments may be made.* The act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), authorizes persons who have made or may make homestead entries subject to the reclamation law to assign their entries in whole or in part at any time after filing in the appropriate land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law.

(2) *Farm units.* (i) In cases where the entry involves all or parts of two or more farm units, the entryman may file an election as to which farm unit he will retain and he may assign and transfer to a qualified assignee any farm unit or units or parts of such units which he does not elect to retain. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

(ii) Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit must be filed with the official in charge of the project, together with the showing required by paragraph (a)(4) of this section. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the agent cashier, Bureau of Reclamation, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after com-

pletion of the survey, and they will also be required to make good any deficiency in their deposit.

(3) *Limitations and conditions.* (i) The law expressly makes assignments "subject to the limitations, charges, terms, and conditions of the Reclamation Act," which, among other things, limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges.

(ii) Assignments must be an absolute sale, divesting the assignor of all interest in the premises assigned. Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in which the land is located, but a quitclaim or warranty deed is preferred.

(iii) Assignees must be more than 21 years of age and must not own, hold, or claim any other farm unit or entry under the reclamation law or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system upon which all installments of construction or building or betterment charges have not been paid in full. If the assignee is a married woman, she must purchase the assignment with her own separate money, in which her husband has no interest or claim (39 L.D. 504 and 43 L.D. 364). If the assignment involves a partial farm unit which an entryman does not elect to retain in accordance with paragraph (a)(2)(i) of this section the assignee must also have an entry or an assignment covering the remainder of such unit.

(4) *Showing required.* Whenever assignments are presented to the land office in accordance with paragraph (a)(5) of this section they must be accompanied by the following:

(i) A showing that the assignment and the assignee meet the requirements of paragraph (a)(3) of this section.

(ii) The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record, or where the original instrument of assignment is presented to an officer having an official impression seal, a copy of the instrument certified by such officer if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the internal revenue law.

(iii) A certificate by the official in charge of the project that water-right application therefor is not receivable or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment.

(iv) Where not all the predecessors in interest to an assignee have had their assignments approved by the land office, such assignee, in addition to the showings required by subdivisions (i), (ii) and (iii) of this subparagraph, must submit satisfactory evidence of title to the land consisting of either the recorded deed or deeds in the chain of title from the original entryman, an abstract of title, or a certificate of title issued by a qualified title company which is acceptable to the Department of the Interior.

(v) A service fee of $5 which will not be returnable.

(5) *When showing is required.* The showing required by subparagraph (4) of this paragraph is required whenever an assignment is presented to the appropriate land office for filing. All assignments should be presented for filing. They must be presented, however, when:

(i) The assignments involve, under paragraph (a)(2)(i) of this section all or part of farm units which an entryman does not elect to retain, or under paragraph (a)(2)(ii) of this section, parts of established farm units.

(ii) The assignee desires to make proof of full compliance with the reclamation law with the view of receiving patent for the land.

(6) *Requirements for patent.* Upon the approval of an assignment, the assignee will become entitled to a patent upon payment of the water-right charges and submittal of satisfactory proof of reclamation as would have been required of the original entryman, and after proof of compliance with the law.

(b) *Mortgages*—(1) *Notice of interest by mortgagees.* (i) Mortgages of lands embraced in homestead or desert-land entries within reclamation projects may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entry-

man in connection with such proceedings, and a like notice of mortgage interest may be filed with the official in charge of the project in case of any lands, whether or not water-right application has been filed under the provisions of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), including homestead entries, desert-land entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by an authorized officer against such lands and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied against such lands.

(ii) All notices of mortgage interest on homestead or desert land entries filed in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

(2) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest filed as provided in the preceding section must be forthwith noted upon the records of the official in charge of the project and of the land office, and be promptly reported to the Commissioner of the Bureau of Reclamation, where like notations will be made. Relinquishment of a homestead or desert-land entry. or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), nor an assignment of a mortgaged desertland entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(3) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the lands at foreclosure sale, such mortgagee-purchaser, whether a nonresident or corporation, may, at any time within 1 year after the end of the statutory period of redemption, if there be such statutory period, and if not, at any time within 1 year after such foreclosure sale, make proof of cultivation and reclamation of the land under section 1 of the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), and receive final water-right certificate, provided such mortgagee-purchaser is otherwise qualified so to do. Water will be furnished said land, and no steps will be taken to cancel the water-right application on account of the holdings by the same mortgagee-purchaser of lands in excess of 160 acres, or the limit per single ownership of private land as fixed by an authorized officer for which a water right may be purchased, until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of the foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of such mortgagee-purchaser. To secure the benefits hereof the mortgagee purchasing the land at foreclosure sale must give notice thereof to the manager of the land office and to the officer in charge of the project within 60 days after such purchase.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–5 Rights of widows and heirs of entryman.

(a) *Completion of entries.* The widows or heirs of persons who make entries under the reclamation law will not be required both to reside upon and cultivate the lands covered by the entries of the persons from whom they inherit, but they must reclaim the land as required by the reclamation law, and make payment of all unpaid charges when due.

(b) *Minor heirs.* Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See Heirs of Frederick C. DeLong, 36 L.D. 332.) If in such case the land has been divided into farm units, the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will be required to conform the entry to one farm unit in the same manner as an original entryman by amending the former entry, relinquishing to the United States or assigning to a duly qualified assignee the lands embraced in the entry in excess of the farm unit he elects to

retain. The purchaser and his assignees take, subject to the payment of the water-right charges authorized by the reclamation law and regulations thereunder, and must reclaim the land as required by said law, but are not required otherwise to comply with the homestead law. Should the land not be sold for the benefit of the minor heirs, but retained by them, they will be required to show compliance with the requirements of law as to reclamation and payment of the charges.

CROSS REFERENCE: For regulations relating to the payment of water-right charges, see §§ 2211.7–6(b) (1) and 2226.4–8.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–6 Final proof; final certificates; patents.

(a) *Requirements for issuance.* (1) The act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), expressly requires reclamation of one-half of the irrigable area of the entry as finally adjusted before final certificate and patents may issue thereunder, and, therefore, the act does not authorize the issuance of final certificate on homestead entries made subject to the reclamation law, prior to the establishment by an authorized officer of farm units, and the conformation of the entry to an approved unit, for the reason that prior to that time the entry is still subject to adjustment in area, and it can not be determined what area must be ultimately reclaimed under the provisions of the act.

(2) The act of Congress of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541) amends the proviso to section 1 of the act of August 9, 1912 (37 Stat. 265), to read as follows:

Provided, That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate.

(3) Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent.

(4) All persons who make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation law will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the lands, except that where entries were made prior to the issuance of public notice announcing the availability of water for the irrigation of the land and prior to June 25, 1910, in which case, under the departmental decision in the case of ex parte J. H. Haynes (40 L.D. 291), and under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), the submission of final proof is not required within the period during which proof must be submitted under the ordinary provisions of the homestead law.

(b) *Commutation not allowed; conformation to farm units.* Reclamation entries are not subject to the commutation provisions of the homestead law, and on the determination by an authorized officer of the Department of the Interior that the proposed irrigation project is practicable, the entries made prior to June 25, 1910, and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the authorized officer, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas.

(c) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as stated in Subpart 2033 of this chapter will be allowed to claim such credit in connection with entries made under the reclamation law, but will not be entitled to receive final certificate or patent until the waterright charges due have been paid and the requirements as to reclamation have been met.

(d) *Reclamation required.* (1) All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period

required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forefeiture, whether water-right application has been made or not.

CROSS REFERENCE: For cultivation requirements of the homestead laws, see §§ 2211.2–2(b) and 2211.2–3 (b) and (c) of this chapter.

(2) Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead law and have submitted proof which has been found satisfactory but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units have not been established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry, as finally adjusted to an approved farm unit, and payment of all charges due under the public notices and orders issued in pursuance of the reclamation law.

(e) *Requirements of reclamation proof.* Homestead and desert-land entrymen, in making proof of compliance with the reclamation law as to reclamation and payment of reclamation charges due, must submit such proof, duly corroborated by two witnesses, in duplicate, to the official in charge of the project showing these facts. Thereupon it shall be the duty of the official in charge to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of the Bureau of Reclamation and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not yet been accomplished as required he will forward the proofs to the manager of the land office for the district in which the land is situate, with his report or findings thereon, for appropriate action. If the proof be rejected by the manager, appeal will lie to the Director, Bureau of Land Management, as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water charges due on account thereof have been paid and that reclamation has been accomplished as required by the reclamation law. Where prior to issuance of public notice water has been furnished on a water-rental basis to reclamation entrymen or others, and by means whereof reclamation sufficient to obtain patent or water-right certificate under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen or others desiring to obtain patent or water-right certificate under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by an authorized officer. In such cases reclamation homestead entries must be conformed to farm units as established by an authorized officer. If not theretofore created, farm units may be established upon application.

(f) *Certifications by superintendents or other officers of irrigation districts and water users' associations.* (1) On a reclamation project (other than the Salt River Valley Project) or part thereof operated and maintained by an irrigation district or water users' association, the certifications as to the cultivation of, reclamation of, and payments from lands within the boundaries of the irrigation district or within the general territory of the water users' association may be made by the superintendent or other appropriate officers of the district or association, under the seal of the district or association, and when so made will be accepted and given the same force and effect as certifications made by a Government project superintendent: *Provided, however,* That when the certificate relates to payments made by the

entryman, and the district or association is delinquent in the payment of charges due from the district or association to the United States, the certificate shall show that the Government charges paid by the entryman to the district or association were paid over to the Government by or on behalf of the district or association.

(2) By Departmental telegram, dated Nov. 26, 1917, the register at Phoenix, Arizona, was instructed to return to the Salt River Valley Water Users' Association for report, recommendation, and forwarding by association to Commissioner, Bureau of Reclamation, all assignments, reclamation homestead entries and certificates of final proof under the reclamation law offered to or filed in his office and that applications to make homestead entries in the Salt River Reclamation project should be noted on his records and forwarded to Commissioner-Bureau of Reclamation for consideration and recommendation.

(g) *What constitutes reclamation and cultivation.* To comply with the provisions of the reclamation law as to reclamation and cultivation, the land must be cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the official in charge of the project of proof of reclamation, except as prevented by hailstorm or flooding, satisfactory crops must be grown on at least one-half of the irrigable area thereof. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or (c) a season's growth of orchard trees or vines of which 75 percent shall be in a thrifty condition. The crop production requirements of this section affecting lands embraced in reclamation homestead entries made after January 1, 1949, must be performed and met by the entryman personally, by members of his immediate family residing with him, or by persons employed under his direction, supervision, and management. The crop production requirements of this section shall be applicable to entryman's successors in interest.

(h) *Time for reclaiming certain lands.* As to all lands subject to the Reclamation Extension Act of August 13, 1914 (38 Stat. 686; 43 U.S.C. 440), at least one-quarter of the irrigable area thereof shall be so reclaimed within three full irrigation seasons after entry or making water-right application, and at least one-half of the irrigable area thereof so reclaimed within five full irrigation seasons after entry or making water-right application, except that the first full irrigation season affecting such land for which water-right application shall have been made prior to May 3, 1915, shall be the irrigation season of 1915. All land thus reclaimed and cultivated shall continue to be so reclaimed and cultivated until after final proof is made and accepted or patent or final water-right certificate issued. Failure to so reclaim lands subject to the said Reclamation Extension Act renders the entry, or, in case of private land, the water-right application therefor, subject to cancellation.

(i) *Liens for unpaid charges*—(1) *On entries under the reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912, as amended by the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), and in the act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), in case of homestead entries under the reclamation law, on ceded Indian lands entered under the Reclamation Act, and in case of desert-land entries within the exterior limits of any land withdrawal or irrigation project under the Reclamation Act, if final proof of compliance with the homestead or desert-land law, as the case may be, has been previously submitted and has been accepted, or if such final proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation the manager will issue final certificate on the entry. The final certificate so issued must be stamped by the manager when issued as follows: "Subject to the provisions of the act of August 9, 1912 (37 Stat. 265)." The entry, if found to be regular, will be approved by the manager for patent under said act of August

9, 1912, or August 26, 1912 (37 Stat. 610), and patent issued reserving the lien and containing other provisions as in said acts provided.

(2) *On entries other than those under reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges, as provided in the act of August 9, 1962, as amended, in the case of homestead entries, other than those under the Reclamation Act, where a water-right application has been filed by the entryman, and the manager has been notified by the official in charge of the project of the acceptance of such application, if final proof has been accepted on the entry, or final proof is submitted at the time of the receipt of such reclamation proof and is found to be sufficient on examination in the land office, the manager will issue final certificate of compliance with the homestead law. The entry, if found to be regular, will be approved by the manager for patent and final water-right certificate will be issued by the project official in charge, reserving a lien to the Government and its successor for the charges due or to become due.

(3) *Act of May 15, 1922.* Sec. 2 of the act of May 15, 1922 (42 Stat. 542; 43 U.S.C. 512) provides in part as follows:

> That patents and water-right certificates which shall hereafter be issued under the terms of the Act entitled "An Act providing for patents on reclamation entries, and for other purposes," approved August 9, 1912 (37 Stat. 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lien for the payment of such charges; * * *. (Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.8 Flathead Irrigation District, Montana.

§ 2211.8–1 Authority.

The Flathead irrigation project was constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and supplemented by the act of May 10, 1926 (44 Stat. 464), and other acts. Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

(Sec. 15, 35 Stat. 450)

§ 2211.8–2 Requirements and limitations on entries.

(a) *Payment of appraised Indian price of land.* An entrymen for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value, annually thereafter for 5 years beginning 1 year after the date of filing, without interest.

(b) *Acreage limitations.* No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

(c) *Payment of costs.* Persons who enter farm units must pay that part of the cost of building, operating and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

(Sec. 15, 35 Stat. 450)

§ 2211.8–3 Assignment.

(a) *Right to assign.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441) persons who have made or may make homestead en-

tries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Bureau of Land Management of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extends the provisions of the act of June 23, 1910, supra, of the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

(b) *Assignment of part of farm unit.* Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project engineer. The assignment, with accompanying showing by the assignor and assignee, must also be filed with the project engineer for his consideration.

(c) *Filing of instruments of assignment.* No assignment of a farm unit or any part thereof shall be accepted by the Bureau of Land Management, or recognized as valid for any purpose, until after the filing in the land office of the showings and certificates required by paragraph (d) of this section.

(d) *Showing required.* Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, including the act of May 10, 1926 (44 Stat. 464), and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing, in the form of a certificate of the project engineer, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), unless such assignment is purchased with her own money and for her own use and benefit.

(e) *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in paragraph (a) to (d) of this section should be noted on the land office record and, if approved, the assignees in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

(Sec. 15, 35 Stat. 450)

§ 2211.8–4 Surveys; plats.

(a) *Cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special disbursing agent of the project on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(b) *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian

Affairs, Billings, Montana, for formal approval.

(Sec. 15, 35 Stat. 450)

§ 2211.8–5 Mortgages.

(a) *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead entries within the Flathead project may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project engineer in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

(b) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the land office, and be promptly reported to the Area Director, Bureau of Indian Affairs. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof under the act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(c) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until 1 year after the end of the statutory period of redemption, if there be such statutory period; if not, until 1 year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of 1 year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the manager of the land office and to the engineer in charge of the project within 60 days thereafter.

(Sec. 15, 35 Stat. 450)

§ 2211.8–6 Widows, heirs or devisees of entrymen.

(a) *Completion of entries by widows, heirs, or devicees.* The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

(b) *Rights of minor heirs.* Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L.D. 332.) The purchaser and his assignees take subject to the payment of

the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

(Sec. 15, 35 Stat. 450)

§ 2211.8–7 Proof.

(a) *Commutation permitted.* These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior.

(b) *Requirements of reclamation proof.* Entrymen, in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit a showing duly corroborated by two witnesses, in duplicate, to the project engineer showing those facts. Thereupon it shall be the duty of the project engineer to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct, he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of Indian Affairs, and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the manager of the land district in which the land is situated, with his report or findings thereon. Where prior to issuance of public notice water has been furnished to entrymen on a water-rental basis, and by means thereof reclamation sufficient to obtain patent under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541–546), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen desiring to obtain patent under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary.

(c) *What constitutes reclamation and cultivation.* To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other encumbrances provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the project engineer of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover, or, (c) a season's growth of orchard trees, or vines, of which 75 percent shall be in a thrifty condition.

(d) *Indian charges, testimony fees, and final commissions.* Upon the submission of proof on entries within the Flathead project, managers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

(e) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Subpart 2033 of this chapter, will be allowed to claim such credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the waterright charges have been met.

(Sec. 15, 35 Stat. 450)

§ 2211.8–8 Final certificates.

(a) *Action on proofs; when final certificate may issue.* If such proof showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the manager, to be sufficient, he will issue final certificate on the entry as provided in paragraph (d)(1) of this section.

(b) *Procedure where proof is not acceptable.* If any proof offered under this law be irregular or insufficient the manager will reject it and allow the entryman the usual right of appeal.

(c) *Acceptance of proof of residence, cultivation, and improvement.* Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the Bureau of Land Management, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation by one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

(d) *Liens*—(1) *Endorsed on final certificate.* (i) Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation, the manager will issue final certificate on the entry. The final certificate so issued must be endorsed by the manager across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)."

(ii) A proviso to the act of May 10, 1926 (44 Stat. 465) provides: That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien.

(2) *Release of lien.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all buildings and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

(Sec. 15, 35 Stat. 450)

§ 2211.8–9 Cancellation of entries.

All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled.

(Sec. 15, 35 Stat. 450)

§ 2211.9 Alaska.

§ 2211.9–1 Homestead settlement entry.

(a) *Lands subject to settlement and homestead entry.* (1) All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

(2) The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U.S.C. 371), July 8, 1916 (39 Stat. 352; 48 U.S.C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U.S.C. 373–375, 378), April 13, 1926 (44 Stat. 243; 48 U.S.C. 379, 380, 380a), and July 11, 1956 (70 Stat. 528; 48 U.S.C. 371c and 375).

(b) *Form of settlement on unsurveyed land.* A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243; 48 U.S.C. 379, 380, 380a). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly extended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

(c) *Notice of settlement.* (1) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the land office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(2) Any person maintaining a settlement claim on April 29, 1950, on surveyed or unsurveyed public land, shall file notice of the initiation of the claim in the land office for the district in which the land is situated, (1) within 90 days from that date, if the notice of location had not theretofore been filed in the recording district, or (2) within two years from April 29, 1950, if notice of the location had theretofore been filed in the recording district.

(3) The notice must be filed on a form approved by the Director, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (a) The name and address of the settler, (b) age and citizenship; (c) date of settlement, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(4) Unless a notice of the claim is filed within the time prescribed in paragraphs (c) and (d) of this section, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

(d) *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00 which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to homestead settlement.

(e) *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (1) A settler on unsurveyed land is required to mark the claim by permanent monuments at

each corner, in order to establish the boundaries thereof.

(2) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

(f) *Law under which homestead must be perfected.* All homestead claims in Alaska must be perfected under and in accordance with the provisions of the 3-year homestead law of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), and regulations thereunder.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–2 Application.

(a) *Form.* Application to make homestead entry for lands in Alaska should be presented on a form approved by the Director, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

(b) *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(1) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 2024.2 of this subchapter.)

(2) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 2321.1–2(c) of this chapter.

CROSS REFERENCES: For Indian and Eskimo allotments, § 2212.9; for school indemnity selections § 2222.9; for shore space, Subpart 2024; for soldier's additional rights, § 2221.9; for trade and manufacturing sites, Subpart 2213.

(c) *Contents.* (1) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(2) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

(d) *Service charges.* (1) When a homesteader applies to make entry he must pay an application nonrefundable service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the Act of May 14, 1880 (21 Stat. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(2) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–3 Acreage.

(a) *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which

may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

(b) *Limitations.* The act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–4 Qualifications of entryman.

(a) *Qualifications required.* Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, Revised Statutes (43 U.S.C. 161, 171), is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that State for not exceeding 160 acres.

(b) *Second entries.* No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in § 2211.5–1 (a) to (d) of this chapter.

(c) *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 2211.4–1 and 2211.4–2 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–5 Residence, cultivation requirements.

(a) *Residence*—(1) *Establishment.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

(2) *Length.* A homestead entryman must show residence upon his claim for at least 3 years; however, he is entitled to absent himself during each year for not more than two periods making up an aggregate of 5 months, giving written notice to the proper land office of the time of leaving the homestead and returning thereto.

(3) *Leave of absence.* A leave of absence for 1 year or less may be granted by the manager to the homesteader who has established actual residence on the land where failure or destruction of crops, sickness, or other unavoidable casualty has prevented him from supporting himself and those dependent upon him by cultivation of the land.

(b) *Cultivation.* There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application

duly filed. Cultivation, which must consist of breaking of the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

(c) *Habitable house.* The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

(d) *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment of $1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), is not subject to commutation.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–6 Surveys.

(a) *Without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the land office, an application to enter on a form approved by the Director and acceptable final or commuted homestead proof as required by § 2211.9–7(a).

(b) *At expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

(c) *Application to enter land included in special survey.* After a special survey has been made, in accordance with paragraph (b) of this section, application to enter should be made as in the case of other settlements on surveyed lands.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–7 Proof.

(a) *Submission.* (1) Proof may be submitted without previous notice of intention by publication.

(2) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the manager of the land office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the proper land office.

(b) *Publication and posting.* (1) Where a special survey has been made, the notice of proof must give the survey number of the land, and other information required by § 1824.9–1 of this chapter and it must be published once a week for nine consecutive weeks, in accordance with § 1824.4 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(2) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 1824.4 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

(c) *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the State transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land

having an extreme width of 200 feet are permitted.

(d) *Adverse claim.* (1) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the land office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(2) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(3) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the manager in accordance with Parts 1840 and 1850 of this chapter.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–8 Loans.

(a) *Mortgage loans on existing homestead entries.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III secs. 1006a, 1006b), should proceed in accordance with § 2211.0–9(a) of this chapter.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

This circular supersedes Circulars 1756, 1766, 1793, 1798, 1947, 1952, 1971, 2102, 2107, 2121, 2122, and 2142. Also superseded are portions of the following circulars: 1949 relating to Part 65; 2001 relating to Part 166; 2085 relating to Parts 65, 166, 167, and 169; 2110 relating to Parts 166, 167, and 230; and 2152 relating to Part 2210.

Circular No. 2172

Superseded by Circ 2185

Regulations pertaining to:

OCCUPANCY on the PUBLIC LANDS

Native Allotments

43 CFR 2212

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

October 21, 1964

Subpart 2212—Native Allotments

2212.0–3 Authority.
2212.0–6 Qualifications of applicants.
2212.0–7 Land subject to allotment.
2212.1 Procedures.
2212.1–1 Petitions and applications.
2212.1–2 Contents of application.
2212.1–3 Effect of application.
2212.1–4 Application for unsurveyed lands.
2212.2 Allotments.
2212.2–1 Certificate of allotment.
2212.2–2 Trust patent.
2212.2–3 Allotments within national forests.
2212.3 Adverse actions.
2212.3–1 Charges and protests against Indian allotments.
2212.3–2 Notice of action.
2212.4 Disposal of trust allotments.
2212.5 Relinquishments.
2212.9 Alaska.
2212.9–1 Applications.
2212.9–2 Proof.
2212.9–3 Number of allotments; contiguity.
2212.9–4 Approval of conveyances.

AUTHORITY: The provisions of this Subpart 2212 issued under R.S. 2478; 43 U.S.C. 1201. Also issued under 34 Stat. 197, 48 U.S.C. 357.

§ 2212.0–3 Authority.

(a) *General Allotment Act of February 8, 1887.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the act of February 28, 1891 (26 Stat. 794), and section 17 of the act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 336), provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

(b) *Act of March 1, 1933.* The act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

Public land withdrawn by Executive Order 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See Subpart 2411 of this chapter.

(c) *Act of May 17, 1906 (Alaska).* (1) The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), of vacant, unappropriated,

and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to certain Indians, Aleuts, or Eskimos of full or mixed blood, who reside in and are natives of Alaska.

(2) Under the Allotment Act, as amended, an applicant for allotment must be at least 21 years of age or the head of a family.

(3) Under the terms of the Allotment Act, as amended, the land allotted is deemed to be the homestead of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. An Indian, Aleut, or Eskimo who receives an allotment under the act, or his heirs, however, may with the approval of the Secretary, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is an Indian, Aleut, or Eskimo native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

§ 2212.0–6 Qualifications of applicants.

(a) *General.* An applicant for allotment under the fourth section of the act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

(b) *Certificate that applicant is Indian and entitled to allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and entitled to such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2212.1–1(b).

(c) *Heirs of Indian settlers and applicants.* (1) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(2) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(3) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

(d) *Minor children.* An Indian settler on public lands under the fourth section of the act of February 8, 1887, as amended, is also entitled upon application to have allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one entitled himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those

who have lost both parents) are not entitled to allotments on the public domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

(e) *Indian wives.* (1) Where an Indian woman is married to a white man or other person not entitled to an allotment under the fourth section of the act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such women and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(2) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise entitled, and also for her minor children where her husband is for any reason disqualified.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

(f) *Citizenship.* (1) Under section 6 of the act of February 8, 1887 (24 Stat. 390; 25 U.S.C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(2) The act of May 8, 1906 (34 Stat. 182; 8 U.S.C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(3) The act of June 2, 1924 (43 Stat. 253, 8 U.S.C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

§ 2212.0–7 Land subject to allotment.

(a) *General.* (1) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(2) Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

(3) Where an Indian makes settlement in good faith upon lands not reserved therefrom, an allotment therefor can not be denied on the ground that the lands are too poor in quality. Also, where settlement was made in good faith, the presence of valuable timber does not warrant the rejection of the allotment.

(4) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

(b) *In Alaska*—(1) *National forest lands.* Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(2) *Coal, oil, or gas lands.* Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2023.5 of this chapter.

§ 2212.1 Procedures.

§ 2212.1–1 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see § 2212.2–3 of this part) must file with the manager of the land office for the district in which the land is situated, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and entitled to allotment, as specified in § 2212.0–6(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

§ 2212.1–2 Contents of application.

(a) The nature, character, and extent of the settlement, as well as the manner in which performed, must be fully set forth in the allotment application. In examining the acts of settlement and determining the intention and good faith of an Indian applicant, due and reasonable consideration should be given to the habits, customs, and nomadic instincts of the race, as well as to the character of the land taken in allotment.

(b) While the act contains no specific requirements as to what shall constitute settlement, it is evident that the Indian must definitely assert a claim to the land based upon the reasonable use or occupation thereof consistent with his mode of life and the character of the land and climate.

§ 2212.1–3 Effect of application.

(a) An allotment application under the fourth section of the act of February 8, 1887, as amended, filed prior to September 23, 1913, does not, in the absence of a certificate from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and subsequent applications for the same land may be received and suspended to await final action on the allotment application.

(b) Where an allotment application under the fourth section, filed subsequent to September 23, 1913, is not accompanied by the requisite certificate from the Indian Office showing the applicant to be entitled to allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(c) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

§ 2212.1–4 Application for unsurveyed lands.

(a) An allotment application under the fourth section of the act of February 8, 1887, as amended, for unsurveyed lands must conform to the following rules along the lines of those found in § 1821.7–1 of this chapter.

(1) It must contain a description of the land by metes and bounds, with courses, distances, and references to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass, unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or objects need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, watercourses, or other natural objects will not be permitted.

(2) An allotment to a minor child need not be contiguous to that made by the head of a family; but it is required that each allotment made to an individual, whether the head of a family, a

single adult, or a minor child, when such allotment embraces more than one legal subdivision, must be composed of contiguous tracts, as in ordinary disposition of the public domain under a settlement law. An additional allotment must be governed by the same rule.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished, or if this cannot be done, a statement must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 90 days. In default of action by the party notified, the manager will promptly adjust the claim to the public land survey, if possible.

(d) Notice of the application describing the land as above directed must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application.

§ 2212.2 Allotments.

§ 2212.2–1 Certificate of allotment.

(a) When the manager approves an application for allotment, he will issue to the applicant a "certificate of allotment", on a prescribed form, showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

§ 2212.2–2 Trust patent.

(a) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued, will run from the date of suspension.

(b) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

§ 2212.2–3 Allotments within national forests.

(a) By the terms of section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests.

(b) An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

(c) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(d) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

(e) The application must be filed with the manager of the land office for the district in which the land applied for is located. He will then forward the case to the Bureau of Indian Affairs for consideration. If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

(f) The provisions of said section are not limited to Indians occupying, living on, or having improvements on lands within a national forest at the date of the passage of the act, but apply also to Indians whose settlement, occupation, or improvements occurred subsequent to the passage of the act.

(g) The listing and opening to entry of lands under the provisions of the Forest Homestead Act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), do not preclude their being taken as an allotment under section 31.

(h) An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the act of February 8, 1887, as amended, apply equally to applications under said section 31.

§ 2212.3 Adverse actions.

§ 2212.3–1 Charges and protests against Indian allotments.

(a) The act of April 23, 1904 (33 Stat. 297; 25 U.S.C. 343), limits the jurisdiction of the Secretary of the Interior to cancel first or trust patents issued on Indian allotments to specific instances, without authority from Congress. In view of the fact that information respecting the classes defined in said act is obtainable from the records of the Department of the Interior no charges preferred as to those classes will be entertained. Third parties are never invited to attack Indian allotments with the hope or expectation of securing any advantage by reason of such attack. Such parties must assume and pay the expense of a hearing, but at the same time they acquire no preference right to enter the land in the event of the cancellation of the allotment, and this whether first or trust patent has issued or not. Section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), does not apply to proceedings of this character.

(b) However, where a party claims equitable rights to lands covered by an Indian allotment for which trust patent has been issued, on account of prior settlement and improvements, a hearing may be ordered with the view of recommending to Congress that such patent be cancelled, if the showing made at the hearing justifies such action. In this class of cases, and in cases of charges preferred against allotments on which trust patents have not issued, the following rules will be observed:

(1) The charges must be filed in the proper land office in the form of a duly corroborated affidavit, clearly setting forth the specific grounds for such charges. The manager will give the Bureau of Indian Affairs full information thereof.

(2) Where it is charged that the lands applied for are not of the character subject to allotment, that the required settlement has not been made, that the contestant has a prior and better claim, and that the applicant for allotment is not seeking to obtain the land in good faith but is acting in the interest of another person not entitled thereto, the State Director will cause a preliminary investigation to be made as to the truth and merits of the charges, if such action is deemed necessary. The charges will be dismissed unless they appear to be probably true.

(3) If sufficient showing is made, a hearing will be had before the proper land officer after due notice to all parties. The taking of testimony and other proceedings in such hearings will be in accordance with Parts 1840 and 1850 of this chapter, governing proceedings before the manager.

(c) Nothing in the foregoing will prevent the Department from accepting an Indian's relinquishment of an unpatented allotment and directing its cancellation if, after the charges are filed, it is shown that the allotment ought to be canceled.

(d) Third parties are not privileged to intervene in proceedings to determine whether lands applied for are of the character subject to allotment or as to the right of the Indian to an allotment as this is a matter resting solely in the judgment of the Department.

§ 2212.3–2 Notice of action.

Notice to Indian allottees, or to their parents, if minors, of any action adverse to their interests must be given by registered letter to the proper Indian superintendent, as well as to the party in interest.

§ 2212.4 Disposal of trust allotments.

The existing laws and regulations relating to the sale of allotted Indian lands, the determination of heirs, the issuance of patents in fee, the disposal of trust allotments by will, and the extension of the trust period, applicable to reservation allotments under the provisions of the act of February 8, 1887, as amended, are equally applicable to allotments made under the fourth section of said act.

§ 2212.5 Relinquishments.

(a) Relinquishments of Indian allotments, if filed in a land office, will be transmitted to the Commissioner of Indian Affairs for consideration and recommendation. Where the application has not been approved, the Commissioner of Indian Affairs has authority to accept or reject the relinquishment, as he may deem proper. Where the allotment application has been approved, the acceptance or rejection must be concurred in by the Commissioner of Indian Affairs. On the acceptance of a relinquishment, the Bureau of Land Management will be notified of the fact. The land affected will not become subject to entry until after the manager has noted the fact of the relinquishment and cancellation on his records.

(b) The manager will, in case of a relinquishment, filed by an Indian, of an allotment application, or of a homestead entry, under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), require the party to write at the foot of the regular form provided for relinquishments, or upon the back thereof, a clear statement of his reasons for desiring to make such relinquishment.

§ 2212.9 Alaska.

§ 2212.9–1 Applications.

(a) Applications for allotment must be filed, in triplicate on a form approved by the Director, properly and completely executed, in the land office which has jurisdiction over the lands. The application must be signed by the applicant but if he is unable to write his name, his mark or thumb print must be impressed on the application and witnessed by two persons.

(b) If surveyed, the land must be described in the application according to legal subdivisions of the public land surveys. If unsurveyed, it must be described as accurately as possible by metes and bounds and natural objects, and its position with reference to rivers, creeks, mountains or mountain peaks, towns or other prominent topographic points or natural objects or monuments, and to well-known nearby roads and trails, must be given.

(c) The application must be accompanied by a statement by the applicant that he has plainly indicated on the ground the corners of the land applied for by setting substantial posts or heaping up mounds of stones on each corner and that he has posted a notice of the application on the land, describing the tract applied for in the terms employed in the application.

(d) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters must be accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the 160-rod limitation. (See Subpart 2024.)

(e) Applications for allotment will be referred by the Bureau of Land Management to the Bureau of Indian Affairs for certification by an authorized officer that the applicant is a native qualified to make application under the Allotment Act, as amended. If the application is returned without such a certification, the application will be rejected.

(f) The filing of an application for allotment will grant no rights to the applicant over and above those which are specified in paragraph (g) of this section and § 2012.9–3. If the applicant does not submit the proof required by § 2212.9–2 within 6 years of the filing of his application in the land office, his application for allotment will terminate without affecting the rights of the applicant gained by virtue of his occupancy of the land, or his rights to make another application. If the application was filed prior to the effective date of this paragraph, the application will be

terminated under this paragraph only by decision of the authorized officer after appropriate notice to the applicant, granting him a reasonable period within which to file proof of continuous use and occupancy of the land as required by the regulation in this part.

(g) The filing of an acceptable application for allotment will segregate the lands to the extent that conflicting applications for such lands will be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned occupancy of the land.

§ 2212.9–2 Proof.

An allotment will not be made until the applicant has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years and the lands are surveyed by the Bureau of Land Management. Such proof must be made in triplicate and filed in the appropriate land office. It must be signed by the applicant, but if he is unable to write his name, his mark or thumbprint must be impressed on the statement and witnessed by two persons. The showing of five years' use and occupancy may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or at any time after the filing of the application when the required showing can be made. The proof should give the name of the applicant, identify the application on which it is based, and appropriately describe the land involved. It should show the periods each year applicant has resided on the land; the amount of the land cultivated each year to garden or other crops; the amount of crops harvested each year; the number and kinds of domestic animals kept on the land by the applicant and the years they were kept there; the character and value of the improvements made by the applicant and when they were made; and the use, if any, to which the land has been put for fishing or trapping.

§ 2212.9–3 Number of allotments; contiguity.

(a) No more than one allotment may be made to any one person.

(b) Lands in an allotment must be in a reasonably compact form and cannot consist of incontiguous tracts of land.

§ 2212.9–4 Approval of conveyances.

Applications for approval of conveyances by an allottee or his heirs must be filed with the appropriate office of the Bureau of Indian Affairs.

This circular supersedes Circular 2008 (except 67.9 and 67.11) and that portion of 2110 relating to Part 176.

GPO 845-969

Regulations pertaining to

OCCUPANCY on the PUBLIC LANDS

Issued and Promulgated

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October 21, 1964

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Regulations pertaining to:

OCCUPANCY on the PUBLIC LANDS

Trade and Manufacturing Sites

43 CFR 2213

October 21, 1964

Regulations pertaining to

OCCUPANCY

on the

PUBLIC LANDS

Trade and Manufacturing Sites

43 CFR 2213

October 21, 1964

Subpart 2213—Trade and Manufacturing Sites

Sec.

2213.0–3 Authority.
2213.0–6 Qualifications of applicant.
2213.1 Procedures.
2213.1–1 Initiation of claim.
2213.1–2 Application.
2213.1–3 Survey.
2213.1–4 Publication and posting; adverse claim.
2213.2 Form of entry.
2213.3 Final certificate.

AUTHORITY: The provisions of this Subpart 2213 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2213.0–3 Authority.

Section 10 of the act of May 14, 1898 (30 Stat. 413, as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 461), authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site. The lands must be nonmineral in character, except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), as amended, and the regulations of § 2023.5 of this chapter.

§ 2213.0–6 Qualifications of applicant.

An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

§ 2213.1 Procedures.

§ 2213.1–1 Initiation of claim.

(a) *Notice.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper land office, within 90 days from that date.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of occupancy, and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufacture, or other productive industry in connection with which the site is maintained or desired.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

(d) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording, because the land is not subject to the form of disposition specified in the notice.

§ 2213.1–2 Application.

(a) *Execution.* Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper land office. It need not be sworn to, but it must be signed by the applicant and must be corroborated by the statements of two persons.

(b) *Fees.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(d) *Contents.* The application to enter must show:

(1) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 461).

(2) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(3) That the land does not abut more than 80 rods of navigable water.

(4) That the land is not included within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, in accordance with § 2321.1–2(c) of this chapter.

(5) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(e) *Description of land.* If the land be surveyed, it must be described in the application according to legal subdivisions of the public-land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without survey.

§ 2213.1–3 Survey.

If the land applied for be unsurveyed and no objection to its survey is known to the manager, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the State Director officer for the survey of the land. The instructions governing survey in connection with applications for soldiers' additional homestead entries, as set forth in § 2221.9–4 (d) of this chapter, will be followed in connection with trade and manufacturing sites.

§ 2213.1–4 Publication and posting; adverse claim.

The instructions given in § 2221.9–4(e) of this chapter, relative to publication and posting, adverse claims and proof of publication and posting in connection with applications for soldiers' additional homestead entries will be followed in connection with trade and manufacturing sites.

§ 2213.2 Form of entry.

Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

§ 2213.3 Final certificate.

The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and final certificate issued upon payment for the land at the rate of $2.50 per acre, and in the absence of objections shown by his records.

This circular supersedes Circular 1757 and portions of 1949, 2001, and 2072 relating to Part 81.

GPO 845-970

Circular No. 2174

Regulations pertaining to

OCCUPANCY on the PUBLIC LANDS

Color- of- Title

43 CFR 2214

October 21, 1964

Subpart 2214—Color-of-Title

2214.0–3 Authority.
2214.1 General regulations.
2214.1–1 Definition.
2214.1–2 Who may apply.
2214.1–3 Procedures.
2214.1–4 Patents.
2214.1–5 Price of land; payment.
2214.1–6 Publication; protests.
2214.2 Color of title claims, New Mexico, contiguous to Spanish or Mexican grants.
2214.2–1 Application.
2214.2–2 Evidence required.
2214.2–3 Publication and posting of notice.
2214.2–4 Final certificate.
2214.3 Erroneously meandered lands, Arkansas.
2214.3–1 Applications.
2214.3–2 Appraisal of land.
2214.3–3 Purchase price required.
2214.3–4 Publication and posting.
2214.3–5 Final certificate.
2214.4 Erroneously meandered lands, Louisiana.
2214.4–1 Applications.
2214.4–2 Appraisal of land.
2214.4–3 Notice to deposit purchase price.
2214.4–4 Publication and posting.
2214.4–5 Final certificate.
2214.5 Erroneously meandered lands, Wisconsin.
2214.5–1 Qualifications of applicants.
2214.5–2 Applications.
2214.5–3 Publications and protests.
2214.5–4 Price of land; other conditions.
2214.6 Snake River, Idaho, omitted lands.
2214.6–1 Offers of lands for sale.
2214.6–2 Applications for purchase.
2214.6–3 Payment and publication.
2214.6–4 Public auctions.

AUTHORITY: The provisions of this Subpart 2214 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2214.0–3 Authority.

(a) *Act of December 22, 1928.* The act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068, 1068a), authorizes the issuance of patent for not to exceed 160 acres of public lands held under claim or color of title of either of the two classes described in § 2214.1–1(b) upon payment of the sale price of the land.

(b) *Act of February 23, 1932.* The act of February 23, 1932 (47 Stat. 53; 43 U.S.C. 178), authorizes the Secretary of the Interior in his discretion to issue patents, upon the payment of $1.25 per acre, for not more than 160 acres of public land, where such land is contiguous to a Spanish or Mexican land grant, and where such land has been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years under claim or color of title and where valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation. The act further provides that where the land is in excess of 160 acres, the Secretary may determine the 160 acres to be patented under the act. Under the said act the coal and all other minerals in the land are reserved to the United States and shall be subject to sale or disposal under applicable leasing and mineral land laws of the United States.

(c) *Act of September 21, 1922.* The act of September 21, 1922 (42 Stat. 992; 43 U.S.C. 992), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Arkansas, which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who in good faith under color of title or claiming as a riparian owner, has prior to September 21, 1922, placed valuable improvements on such land or reduced some part thereof to cultivation.

(d) *Act of February 19, 1925.* The act of February 19, 1925 (43 Stat. 951; 43 U.S.C. 993), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Louisiana, which were originally erroneously meandered and shown upon the official plats as water-covered areas and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who, or whose ancestors in title in good faith under color of title or claiming as a riparian owner, has prior to February 19, 1925, placed valuable improvements upon or reduced to cultivation any of such lands. The coal, oil, gas, and other minerals in such lands are reserved to the United States.

(e) *Act of August 24, 1954.* The act of August 24, 1954 (68 Stat. 789), directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, under certain terms and conditions. The act of February 27, 1925 (43 Stat. 1013; 43 U.S.C. 994), authorized the Secretary of the Interior to sell such public lands

under certain other terms and conditions. These acts are cited as "the act of 1954" and "the act of 1925," respectively, in §§ 2214.5–1 to 2214.5–4.

(f) *Act of May 31, 1962.* (1) The act of May 31, 1962 (76 Stat. 89), hereafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to sell at not less than their fair market value any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries, which have been, or may be, found upon survey to be omitted public lands of the United States, and which are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

(2) The Act provides that in all patents issued under the Act, the Secretary of the Interior (i) shall include a reservation to the United States of all the coal, oil, gas, oil shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen, and bitumen rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same; and (ii) may reserve the right of access to the public through the lands and such other reservations as he may deem appropriate and consonant with the public interest in preserving public recreational values in the lands.

(3) The Act further provides that the Secretary of the Interior shall determine the fair market value of the lands by appraisal, taking into consideration any reservations specified pursuant to subparagraph (2) of this section and excluding, when sales are made to preference-right claimants under section 2 of the Act, any increased values resulting from the development or improvement thereof for agricultural or other purposes by the claimant or his predecessors in interest.

(4) The Act grants a preference right to purchase lands which are offered by the Secretary of the Interior for sale under the Act to any citizen of the United States (which term includes corporations, partnerships, firms, and other legal entities having authority to hold title to lands in the State of Idaho) who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation or occupied any of the lands so offered for sale, or whose ancestors or predecessors in title have taken such action.

§ 2214.1 General regulations.

§ 2214.1–1 Definition.

(a) "The act", when used in this section means the act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068, 1068a), as amended by the act of July 28, 1953 (67 Stat. 227, 43 U.S.C. 1068a).

(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

§ 2214.1–2 Who may apply.

Any individual, group, or corporation authorized to hold title to land in the State and who believes he has a valid claim under color of title may make application.

§ 2214.1–3 Procedures.

(a) *Application.* (1) An application for a claim of class 1 or of class 2 must be filed in duplicate on a form approved

by the Director. It must be filed in accordance with the provisions of § 1821.2 of this chapter.

(2) Every application must be accompanied by a filing fee of $10, which will be nonreturnable.

(3) The application must be in typewritten form, or in legible handwriting, and it must be completely executed and signed by the applicant.

(4) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters.

(b) *Description of lands applied for.* Application under the act may be made for surveyed or unsurveyed lands. If unsurveyed, the description must be sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. If unsurveyed land is claimed, final action will be suspended until the plat of survey has been officially filed.

(c) *Presentation and verification of factual statements.* (1) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on a form approved by the Director. The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant.

(2) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on a form approved by the Director which must be certified by the proper county official or by an abstractor.

§ 2214.1–4 Patents.

(a) Any applicant who satisfied all requirements for a claim of class 1 or class 2 commencing not later than January 1, 1901, to the date of aplication and who so requests in the application will receive a patent conveying title to all other minerals except:

(1) Any minerals which, at the time of approval of the application, are embraced by an outstanding mineral lease or

(2) Any minerals for which the lands have been placed in a mineral withdrawal.

All other patents will reserve all minerals to the United States.

(b) All mineral reservations will include the right to prospect for, mine, and remove the same in accordance with applicable law.

(c) The maximum area for which patent may be issued for any claim under the act is 160 acres. Where an area held under a claim or color of title is in excess of 160 acres, the Secretary has authority under the act to determine what particular subdivisions not exceeding 160 acres, may be patented.

§ 2214.1–5 Price of land; payment.

(a) *Price of land.* The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than $1.25 per acre.

(b) *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 2214.1–6 Publication; protests.

(a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 1824.4 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the office specified in § 2214.1–3(a) their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2214.2 Color of title claims, New Mexico, contiguous to Spanish or Mexican grants.

§ 2214.2–1 Application.

(a) *Where filed; purchase price required.* Applications under the act of

February 23, 1932 must be filed with the manager of the land office at Santa Fe, New Mexico, and should be accompanied by payment of the purchase price of the land applied for at the rate of $1.25 per acre.

(b) *Form.* No special form of application is provided. The application should be in typewritten form or in legible handwriting and must be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein.

(c) *Contents of application.* Applicants desiring to take advantage of the benefits of the act of February 23, 1932, must show the following matters in their applications:

(1) Full name and post-office address of the applicant and whether married or single.

(2) Description of the land for which patent is desired. If surveyed, the land should be described by legal subdivision, section, township, and range. If unsurveyed, the land should be described by metes and bounds.

(3) That the land applied for is contiguous to a Spanish or Mexican land grant. The grant should be identified by name, number, patentee or description of land involved. The points or places at which the land applied for is contiguous to the Spanish or Mexican land grant, must be clearly shown.

(4) That possession of the lands applied for has been maintained for more than 20 years under claim or color of title. If the applicant is claiming as a record owner, he or she will be required to file an abstract of title, certified to by a competent abstractor, showing the record of all conveyances of the land up to the date of the filing of the application. If the applicant is not a record owner and no abstract of title can be furnished, statements must be filed, setting forth the names of all mesne possessors of the land, the periods held by each, giving the dates and manner of acquiring possession of the land, and the acts of dominion exercised over the land by each possessor.

(5) That the lands have been held in good faith and in peaceful, adverse possession. The applicant should show whether or not he and his predecessors in interest have paid taxes on the lands and for what periods of time, and whether any consideration was paid for any conveyances of the land. It should further be shown whether there is any person who is claiming the land adversely to the applicant, and if there be such, the name and address of such adverse claimant should be furnished.

(6) Whether or not valuable improvements have been erected upon the land applied for and whether or not any part of such land has been reduced to cultivation. If improvements have been made, the nature, the value, the exact location, and the time of erection thereof, should be fully disclosed together with the identity of the one who was responsible for erecting such improvements. If any of the land has been reduced to cultivation, the subdivision so claimed to have been reduced must be identified and the amount and nature of the cultivation must be set forth, together with the dates thereof.

§ 2214.2–2 Evidence required.

(a) *Citizenship.* The applicant must furnish a statement showing whether such applicant is a native-born or naturalized citizen of the United States. In the event an applicant is a naturalized citizen, the statement should show the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and when available, the number of the document in question, if the proceeding has been had since September 26, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which the applicant was a citizen or subject. In case the applicant is a corporation, a certified copy of the articles of incorporation should be filed.

(b) *Acreage claimed.* The applicant in the statement required under paragraph (a) of this section must show that the land claimed is not a part of a claim which embraced more than 160 acres on February 23, 1932. If the land claimed is part of a claim containing more than 160 acres, a full disclosure of all facts concerning the larger claim must be furnished.

§ 2214.2–3 Publication and posting of notice.

(a) If upon consideration of the application it is determined that the applicant is entitled to purchase the land applied for, the applicant will be required to publish notice of the application in a newspaper of general circulation in the county wherein the land applied for is situated. Notice for publication shall be issued in the following form:

Land Office,
Santa Fe, New Mexico.

Notice is hereby given that _____
(Name of applicant)
of _____, has filed applica-
(Address)
tion _____
(Number and land office)
under the act of February 23, 1932 (47 Stat. 53), to purchase _____,
(Land)
Sec. ____, T. ____, R. ____, _____ Mer., claiming under _____.
(Ground of claim)

The purpose of this notice is to allow all persons having bona fide objection to the proposed purchase, an opportunity to file their protests in this office on or before _____.
(Date)

_____
(Manager)

(b) The notice shall be published at the expense of the applicant and such publication shall be made once each week for a period of five consecutive weeks. A copy of the notice will be posted in the land office during the entire period of publication. The applicant must file evidence showing that publication has been had for the required time, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice as published.

§ 2214.2–4 Final certificate.

(a) Upon submission of satisfactory proof of publication and the expiration of the time allowed for the filing of objections against the application, if there be no protest, contest or other objection against the application, final certificate will then be issued by the manager.

(b) There will be incorporated in patents issued on applications under the above act, the following:

Excepting and reserving, however, to the United States, the coal and all other minerals in the land so patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said lands for the purpose of prospecting for and mining such deposits as provided for under the act of February 23, 1932 (47 Stat. 53).

§ 2214.3 Erroneously meandered lands, Arkansas.

§ 2214.3–1 Applications.

(a) Applications to purchase under the act of September 21, 1922, must be signed by the applicant in the State of Arkansas. Such applications had to be filed within 90 days from the date of the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plats. The applicant must show that he is either a native-born or naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based, and that the applied-for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation had, if any, and how long continued. This application must be supported by the statements of two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2214.3–2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act of September 21, 1922.

§ 2214.3–3 Purchase price required.

If upon consideration of the application it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified by registered mail that he must within 30 days from service of notice deposit the appraised price, or thereafter, and with-

out further notice, forfeit all rights under his application.

§ 2214.3–4 Publication and posting.

Upon payment of the appraised price a notice of publication will be issued. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elaspe between the date of last publication and date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau of Land Management will cause a notice similar to the notice for publication to be posted in such office, during the entire period of publication. The publisher of the newspaper must file in the Bureau of Land Management prior to the date fixed by the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice published.

§ 2214.3–5 Final certificate.

Upon submission of satisfactory proof, if no protest or contest is pending, final certificate will be issued.

§ 2214.4 Erroneously meandered lands, Louisiana.

§ 2214.4–1 Applications.

(a) Applications to purchase under the act of February 19, 1925, must be signed by the applicant in the State of Louisiana. Such applications had to be filed within 90 days from the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plat. The applicant must show that he is either a native-born or a naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of the title his claim is based; in other words, a complete history of the claim, and that the lands applied for are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation, if any, and how long continued. Such application must be supported by the statement of at least two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2214.4–2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act.

§ 2214.4–3 Notice to deposit purchase price.

If, upon consideration of the application, it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified, by registered mail, that he must within 6 months from receipt of notice deposit the appraised price of the land or else forfeit all his rights under his application.

§ 2214.4–4 Publication and posting.

Upon payment of the appraised price of the land the Bureau will issue notice of publication. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands, once a week for five consecutive weeks, in accordance with § 1824.4 of this chapter, immediately prior to the date of sale, but a sufficient time shall elapse between the date of the last publication and the date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed.

Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau will also cause a copy of such notice of publication to be posted in such office during the entire period of publication. The applicant must file in the Bureau prior to the date fixed for the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher accompanied by a copy of the notice so published.

§ 2214.4–5 Final certificate.

Upon the submission of satisfactory proof, the Bureau will, if no protest or contest is pending, issue final certificate, such certificate to contain a stipulation that all the minerals in the lands described in the application are reserved to the United States with the right to prospect for, mine and remove same.

§ 2214.5 Erroneously meandered lands, Wisconsin.

§ 2214.5–1 Qualifications of applicants.

(a) To qualify under the act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

(b) To qualify under the act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had, prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such public lands.

§ 2214.5–2 Applications.

(a) Claimants under the act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the act of 1954 must be filed within one year after August 24, 1954, or one year from the date of the official plat or resurvey, whichever is later. All applications must be filed in duplicate with the Bureau of Land Management, Washington 25, D.C.

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the applicant.

(2) The legal description and acreage of the public lands claimed or desired.

(3) The legal description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired. If the claim is based on ownership of such adjoining lands, the application must be accompanied by a certificate from the proper county official or by an abstractor, showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) If the applicant is a color-of-title applicant under the act of 1925, a statement whether or not the applicant is a citizen of the United States.

(5) If the application is based on color of title or riparian claim under the act of 1925, a statement fully disclosing the facts of the matter; or if the application is based on peaceful, adverse possession under the act of 1954, a similar statement showing peaceful, adverse possession by the applicant, or his predecessors in interest, since the issuance of the patent to the lands adjoining the claimed lands.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation, if any, of the lands applied for, including the nature, location, and dates of such cultivation.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands applied for or claimed.

(9) The names and post office addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2214.5–3 Publication and protests.

(a) The applicant will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the Bureau of Land Management, Washington, D.C., their objections to issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2214.5–4 Price of land; other conditions.

(a) Persons entitled to a patent under the act of 1954 must, within 30 days after request therefor, pay, under the same terms and conditions, the same price per acre as was paid for the land included in their original patent.

(b) Persons entitled to a patent under the act of 1925, within 30 days after request therefor, must pay the appraised price of the lands, which price will be the value of the lands as of the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands for agricultural purposes by the applicant or his predecessors in interest but inclusive of the stumpage value of any timber cut or removed by them.

§ 2214.6 Snake River, Idaho, omitted lands.

§ 2214.6–1 Offers of lands for sale.

Before any lands may be sold under the Act, the authorized officer of the Bureau of Land Management shall publish in the FEDERAL REGISTER and in at least one newspaper of general circulation within the State of Idaho a notice that the lands will be offered for sale, which notice shall specify a period of time not less than 30 days in duration during which citizens may file with the land office at Boise, Idaho, a notice of their intention to apply to purchase all or part of the lands as qualified preference-right claimants.

§ 2214.6–2 Applications for purchase.

(a) All citizens who file a notice of intention in accordance with § 2214.6–1 within the time period specified in the published notice or any amendment thereof will be granted by the authorized officer a period of time not less than 30 days in duration in which to file, in duplicate with the Manager of the Boise Land Office, their applications to purchase lands as preference-right claimants.

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the claimant.

(2) The description and acreage of the public lands claimed or desired.

(3) The description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired, accompanied by a certificate from the proper county official or by an abstractor or by an attorney showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) A statement showing that the claimant is a citizen of the United States, as defined in subparagraph (4) of § 2214.0–3(f).

(5) A statement giving the basis for color of title or claim of riparian ownership.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation and occupancy, if any, of the lands applied for, including the nature, location, and date of such cultivation and occupancy.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands claimed.

(9) The names and addresses of at least two disinterested persons having

knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2214.6–3 Payment and publication.

(a) Before lands may be sold to a qualified preference-right claimant, the claimant will be required to pay the purchase price of the lands and will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons having objections to file with the Manager of the Land Office at Boise, Idaho, their objections to issuance of patent to the claimant. A protestant must serve on the claimant a copy of the objections and must furnish the Manager with evidence of such service.

(b) Among other things, the notice will describe the lands to be patented, state the purchase price for the lands, and the reservations, if any, to be included in the patent to preserve public recreational values in the lands.

(c) The claimant must file a statement of the publisher, acompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2214.6–4 Public auctions.

(a) The authorized officer may sell under the Act at public auction any lands for which preference-claimants do not qualify for patents under the regulations of §§ 2214.0–3(f) and 2214.6.

(b) Lands will be sold under this section at not less than their appraised fair market value at the time and place and in the manner specified by the authorized officer in a public notice of the sale.

(c) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(d) A bid sent by mail must be received at the place and within the time specified in the public notice. Each such bid must clearly state (1) the name and address of the bidder and (2) the specified tract, as described in the notice for which the bid is made. The envelope must be noted as required by the notice.

(e) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid.

(f) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared the purchaser.

This circular supersedes Circulars 1885, 1910, 1937, 1984, 2088, 2132, and 2134, and that portion of 2001 relating to Part 141.

GPO 845-971

Circular No. 2175

Regulations pertaining to:

Replaced by Circ. 2294

OCCUPANCY on the PUBLIC LANDS

Mining Claim Occupancy Act

43 CFR 2215

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

October 21, 1964

Subpart 2215—Mining Claim Occupancy Act

2215.0–2 Objectives.
2215.0–3 Authority.
2215.0–5 Definitions.
2215.1 Petitions.
2215.2 Applications.
2215.3 Offers to convey an interest in the lands applied for.
2215.4 Offers of alternate tracts.

AUTHORITY: The provisions of this Subpart 2215 issued under Act of October 23, 1962 (70 Stat. 1127) and 43 U.S.C. 2, 1201, 1371.

§ 2215.0–2 Objectives.

(a) The program of the Secretary of the Interior in the administration of the Act is to grant to qualified applicants maximum tenure consistent with the public interest in the lands which they occupy. Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, provided that, where paragraph (b) of § 2215.0–3 is applicable, tenure shall also be consistent with the terms and conditions specified by the agency or department in aid of whose function the lands are used. The right to purchase an alternate tract will ordinarily be granted a qualified applicant where the consent mentioned in paragraph (b) of § 2215.0–3 is required but not given and the other requirements of that paragraph are satisfied.

(b) In determining the price for the interest to be conveyed under the Act, the Secretary of the Interior will weigh and evaluate the equities claimed by the applicant and will also give consideration to other equities which his investigation may reveal.

§ 2215.0–3 Authority.

(a) The Act of October 23, 1962 (76 Stat. 1127), hereinafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to convey to any qualified applicant who is an occupant of an unpatented mining claim which is determined by the Secretary to be invalid, an interest, up to and including a fee simple, in and to an area within the claim of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less. The Act permits the Secretary to make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Such conveyances may be made only to a qualified applicant who applies therefor within 5 years from October 23, 1962, and upon payment of an amount established in accordance with the Act.

(b) The Act further provides that when the qualified applicant applies for lands which have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. Where such consent is not given, the Act permits the Secretary, after arrangements satisfactory to the Secretary have been made for termination of the applicant's occupancy of his unpatented mining claim and for settlement of any liability for the unauthorized use thereof which may have been incurred, to grant the applicant a right to purchase, for residential use, an interest in another tract made available by him for sale under the Act (1) from unappropriated and unreserved lands of the United States or (2) from lands subject to classification under section 7 of the Taylor Grazing Act (48 Stat. 1272, 43 U.S.C. 315f), as amended, said right to expire within 5 years from the date on which it is granted, unless sooner exercised.

(c) The Act requires the Secretary, prior to any conveyance under the Act, to determine the fair market value, as of the date of appraisal, of the interest to be conveyed exclusive of the value of any improvements placed on the lands by the applicant or his predecessors in interest. It also requires him, in establishing the purchase price to be paid by the applicant, to take into consideration any equities of the applicant and his predecessors in interest, including conditions of prior use and occupancy, the price never to exceed its fair market value nor to be less than $5 per acre and to be payable, in the discretion of the Secretary, in a lump sum or in installments.

(d) The Act provides that all conveyances thereunder shall reserve to the United States all mineral interests of the United States in the lands conveyed for

the term of the estate. It withdraws from all forms of entry and appropriation, for the term of the estate conveyed, reserve minerals locatable under the mining laws or disposable under the Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601–604, as amended). It permits the Secretary to lease, under the mineral leasing laws, reserved oil, gas, and other leasable minerals for exploration and development purposes, but without the right of surface ingress or egress.

(e) The Act provides that the execution of any conveyance thereunder does not relieve an applicant of any liability, existing on the date of the conveyance, to the United States, for unauthorized use of the land in and to which an interest is granted. However, it provides that, with respect to persons who file applications for conveyance pursuant to the Act within 5 years of October 23, 1962, trespass charges shall not be sought or collected from any qualified applicant who has filed an application for land in the mining claim pursuant to the Act, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary or the voluntary relinquishment of the mining claim, whichever occurs earlier, provided that the mining claim embracing the land applied for was not located at a time when the land included therein was withdrawn or otherwise not subject to location.

(f) The Act provides that any conveyance of less than a fee made under the Act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

§ 2215.0–5 Definitions.

As used in the Act and the regulations of this part:

(a) The term "qualified applicant" means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant-owner.

(b) The term "occupant-owner" refers to persons who, on October 23, 1962, claimed title to valuable improvements which they or their predecessors in interest have constructed on an unpatented mining claim even though title to the improvements might ultimately be found to be in the Government.

(c) The term "interest" includes any estate in lands, including, but not limited to, fee simple, life estate, estate for a term of years, lease, or permit.

(d) The term "a principal place of residence" means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

(e) The term "qualified officer of the United States" means the Secretary of the Interior or his designate within the Department of the Interior or, with respect to lands within the administrative jurisdiction of any other department or agency, the designate of the head of that department or agency under authority delegated to him by the Secretary of the Interior.

(f) The word "equities" is intended to include for consideration such things as the pecuniary situation of the applicant, his abilty to pay, whether he previously paid market value for the property, the date when the mining claim was first staked, whether there are substantial reasons to believe that a concerted effort was made to develop and extract the minerals sought as compared to a casual attempt, whether such minerals were actually extracted and the deposit depleted, and whether the applicant was relying on custom in his occupancy. The word "equities" does not include any payments of real property taxes, public benefit assessments, or any other public service charges.

§ 2215.1 Petitions.

Any person who holds a mining claim which has not been invalidated and who wishes to determine whether he should make application under the Act, may petition, in writing, any qualified officer

of the United States to state whether or not he believes the claim to be invalid. The petition must be accompanied by a nonrefundable petition service fee of $5. Such a petition will not be considered an admission of the invalidity of a claim. The petition should include the name and post office address of the claimant, the name, location and legal description of the mining claim or references sufficient to identify the land on the ground, the date of the location, date and place of recordation and claim of title, a description, including dates, of improvements placed on the lands, and a request for a statement of belief as to the invalidity of the claim.

§ 2215.2 Applications.

(a) Applicants must file applications on or before October 23, 1967, in the proper land office in the State in which the lands are located, or if the lands are in a State in which there is no land office, with the Bureau of Land Management, Washington 25, D.C., except that applications for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; applications for lands in Nebraska must be filed in the land office at Cheyenne, Wyoming.

(b) A filing fee of $10 which is not returnable is required, and should accompany the application.

(c) No particular form of application is required but the application must be typewritten or in legible handwriting and should contain the following information:

(1) Name and post office address of the applicant.

(2) Location of the mining claim by legal or other description sufficient to permit ready, accurate identification of the lands on the ground.

(3) Date of location of mining claim, name of claim, date and place of recordation, and chain of title.

(4) A description of the improvements placed upon the lands involved, and a statement showing that a residence had been on the claim since prior to July 23, 1955.

(5) A statement as to ownership and possession of the improvements during the period beginning with July 23, 1955, through October 23, 1962, including the name or names of any predecessors in interest during said period.

(6) Reference to the Act of October 23, 1962 (76 Stat. 1127).

(7) The date the mining claim was determined to be invalid or the date the claim was relinquished to the United States.

(8) A statement of the interest in lands which the applicant desires, such as "fee title," "lease," or "life estate."

(9) A statement of any equities which the applicant feels should be considered in establishing the purchase price.

(10) A description of the lands, not to exceed 5 acres, claimed to be actually occupied.

§ 2215.3 Offers to convey an interest in the lands applied for.

Where the authorized officer determines that an interest in the lands applied for can be conveyed, he will submit to the applicant an offer to convey, specifying the term of the estate offered, the conditions precedent which must be met before conveyance may be made, the limitations and reservations to be contained in the conveyance, the price to be paid, the cost of survey, if any, the conditions subsequent to be performed by the applicant, and the time within which the offer must be accepted. (See § 2215.0–3.)

§ 2215.4 Offers of alternate tracts.

(a) Where the authorized officer determines that an interest in the lands sought cannot be conveyed, he will so notify the applicant, giving his reasons therefor.

(b) Where the authorized officer determines that the conveyance of an interest in lands is otherwise justified but that the interests cannot be conveyed because the consent mentioned in paragraph (b) of § 2215.0–3 is not given, and he determines further that it would be proper to grant the applicant the right to select an alternate tract under the Act, he will advise that if satisfactory arrangements are made for termination of the occupancy of the unpatented mining claims and for settlement of any liability for unauthorized use thereof which may have been incurred, he will grant the applicant the right to select and purchase within 5 years an alternate tract from lands available or to be made available under the Act. The first applicant to select an available tract will have a preference right to purchase it at the price and under the terms set by the authorized officer, including a limitation on the time within which the applicant may purchase the tract selected.

This circular supersedes Circular 2093.

GPO 845-972

Repl. by 2265

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

Group 2200—Disposition

[Circular 2176]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

TRAMROADS AND LOGGING ROADS

Sections 2234.2–3(b) (6)(i)(*a*), (7)(iv), (17), (18)(i), and (19)(i)(a) are amended to read as follows:

§ 2234.2–3 For tramroads and logging roads.

* * * * *

(b) *Over O. and C. and Coos Bay revested lands.* * * *

(6) *Applications*—(i) *Filing.* (*a*) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form prescribed by the Director and filed in the appropriate district office. Application forms will be furnished upon request.

* * * * *

(7) *Right-of-way and road use agreement; recordation.* * * *

(iv) Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district manager.

* * * * *

(17) *Bond on connection with existing roads.* An applicant for permit or a permittee desiring to use an existing road owned or controlled by the United States, shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with § 2234.2–3(b)(1)—(24) and the terms and conditions of the permit.

(18) *Approval of permit.* (i) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form prescribed by the Director.

* * * * *

(19) *Terms and conditions of permit.* (i) As to all permits: Every permittee shall agree:

(*a*) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under subparagraph (7) of this paragraph with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations, the permittee shall unreasonably withhold his assent, the authorized officer shall refer the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer, and if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

NOVEMBER 12, 1964.

[F.R. Doc. 64–11796; Filed, Nov. 18, 1964; 8:46 a.m.]

Published in 29 F.R. 15516, November 19, 1964 - Effective upon publication

Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2177]

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Subpart 1810—General Rules; Information Required by Forms

A new section is added to Subpart 1810 as follows:

§ 1810.4 Information required by forms.

Whenever a regulation in this chapter requires a form approved or prescribed by the Director of the Bureau of Land Management, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 29, 1964.

[F.R. Doc. 65-5; Filed, Jan. 4, 1965; 8:45 a.m.]

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Circular Distribution List

GPO 847-179

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2178]

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

PART 2230—SPECIAL USES

Subpart 2235—Leases

PART 2320—INTERIOR DEPARTMENT

Subpart 2321—Bureau of Land Management

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3130—COAL LEASES, PERMITS AND LICENSES

Subpart 3131—General Provisions

PART 3210—ACQUIRED LANDS LEASING ACT

Subpart 3212—Lease Requirements

PART 3220—LEASING UNDER THE REORGANIZATION ACT AND OTHER ACTS

Subpart 3220—Leasing Under the Reorganization Act and Other Acts; General

PART 3630—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3635—Papago Indian Reservation

SUBCHAPTER D—RANGE MANAGEMENT (4000)

PART 4130—GRAZING ADMINISTRATION (ALASKA)

Subpart 4131—Grazing Leases

1. Section 2235.1–1(m) and (n) revised to read as follows:

§ 2235.1–1 Airport and aviation fields—Act of May 24, 1928.

* * * * *

(m) *Beacon lights.* Government department and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed in § 2235.1–1. However, no rental will be charged. Lands for beacon lights and other navigation facilities may be withdrawn in accordance with the provisions of Part 2310 and § 2321.6 of this chapter.

(n) *Segregation of lands.* The filing in the proper land office of an application for a lease of lands under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, shall segregate the lands described in the application from all appropriation.

2. A New §§ 2321.6, 2321.6–1, 2321.6–2 are added to Subpart 2321, to read as follows:

§ 2321.6 Terminal airports, beacon lights and other navigation facilities.

§ 2321.6–1 General.

(a) *Authority.* (1) The act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, authorizes the Secretary of the Interior to withdraw lands for beacon lights and other air-navigation facilities, under such rules as he may prescribe.

Published in 29 F.R. 19248, December 31, 1964 - Effective upon publication.

Circular Distribution List

(2) Under the authority given to the President by the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141, 16 U.S.C. 471) to withdraw lands for public purposes, withdrawals may be made for beacon lights, emergency or intermediate landing fields, and terminal airports.

§ 2321.6–2 Procedures.

(a) Withdrawals under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211) may be made on motion of the Bureau of Land Management, or upon application of the Federal Aviation Agency or any other Federal agency, or the lessee of a terminal airport or the applicant for such a lease.

(b) To the extent applicable, the procedures in Part 2310 of this chapter shall apply.

(c) In addition to the requirements of Part 2310 of this chapter, all applications for withdrawal shall contain a statement by the authorized officer of the Federal Aviation Agency as to the need and feasibility of the facility for which the withdrawal is requested.

3. Paragraphs (b), (c), and (d) are added to § 3131.1 to read as follows:

§ 3131.1 Acreage limitation.

* * * * *

(b) A person, association, or corporation may file with the Manager of the appropriate land office an application or applications for coal leases or permits for acreage in addition to the 10,240 acres, which application or applications shall be in multiples of 40 acres, not exceeding a total of 5,120 additional acres in any one State, and shall contain a statement that the granting of a lease or permit for such additional lands is necessary to carry on business economically and is in the public interest.

(c) Upon the filing of an application for additional lands as specified in paragraph (b) of this section, the coal deposits in the lands covered thereby shall be temporarily set aside and withdrawn from all forms of disposal under the Act.

(d) All applications filed for additional lands as specified in paragraph (b) of this section shall be posted in the appropriate land office, and the authorized officer shall conduct public hearings thereon. Upon conclusion thereof, he may, in his discretion or whenever sufficient public interest is manifested, reevaluate the lessee's or permittee's need for all or any part of the additional acreage. Thereafter and to the extent necessary for the applicant to carry on business economically, the authorized officer may issue coal leases or permits to the applicant for additional acreage of not more than 5,120 acres (within the aggregate limitation of 2,560 acres in a single lease or permit), subject to such terms and conditions as may be prescribed by the Secretary of the Interior. Such terms and conditions may require the payment either of a cash bonus per acre or fraction thereof or a rental and royalty rate different from that required by the original leases or permits or both.

4. The second paragraph of § 3212.3 (a) is deleted in its entirety so that § 3212.3(a) shall read as follows:

§ 3212.3 Leases of future or fractional interests.

(a) *General.* Subject to the provisions of section 3 of the Act, non-competitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. There is no required form for applications or offers for non-competitive leases of any mineral subject to the Act, except oil and gas. However, such applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3211.2, 3211.3, 3212.1 and this section. The terms and conditions of leases covering future or fractional interests in mineral deposits other than oil and gas, of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements under § 3120.3–1 covering future or fractional interests, will be established on an individual case basis.

* * * * *

5. The caption of Part 3220 is amended to read as follows: Part 3220—*Leasing under the Reorganization Act and Other Acts.*

6. The caption of Subpart 3220 is amended to read as follows: Subpart 3220—*Leasing under the Reorganization Act and Other Acts; General.*

7. A new § 3635.0–1, is added to Subpart 3635, to read as follows:

§ 3635.0–1 Purpose.

The regulations in this part apply to entries made prior to May 27, 1955. By virtue of the act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Papago Indian Reservation.

8. Section 4131.2–4(c) is amended to read as follows:

§ 4132.2–4 Annual rental.

* * * * *

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of sixty days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 30, 1964.

[F.R. Doc. 64–13540; Filed, Dec. 30, 1964; 10:55 a.m.]

Repl. by C-2206

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2179]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

Paragraph (a) of § 1821.2–1 is amended to read as follows:

§ 1821.2–1 Office hours of land offices.

(a) Documents may be filed and records inspected in land offices and the Washington office of the Bureau of Land Management between the hours of 10:00 a.m. and 3:00 p.m. each day the offices are open. The offices observe standard time or daylight saving time, whichever is in effect in the cities in which they are located. All offices are open Monday through Friday of each week, with the exception of national holidays, or any other day which may be designated as a special holiday by order of the President or the Congress. When a national holiday falls on Sunday, the offices will be closed on the following Monday; if a holiday falls on Saturday, the offices will be closed on the preceding Friday.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 15, 1965.

[F.R. Doc. 65–695; Filed, Jan. 22, 1965; 8:45 a.m.]

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Circular Distribution List

GPO 847-773

Repl. by C-2190

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular 2180]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4111—Awards of Grazing Privileges

CHANGE IN CODIFICATION

1. Section 4111.4–1 is renumbered to read as follows: § 4111.4–2 *Increases.*
2. Section 4111.4–2 is renumbered to read as follows: § 4111.4–3 *Reductions.*

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 13, 1965.

[F.R. Doc. 65–1754; Filed, Feb. 18, 1965; 8:47 a.m.]

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Circular Distribution List

GPO 848-297

Replaced by 2239

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2181]

PART 2240—SALES AND EXCHANGES

Subpart 2244—Exchanges

CERTAIN NATIONAL SEASHORES AND RECREATION AREA

Basis and purpose. The purpose of this amendment is to provide procedures for the acquisition by exchange of lands within the Fire Island National Seashore and within the Lake Mead National Recreation Area, and to require that all formal applications for exchange be accompanied by a statement of the appropriate Regional Director, National Park Service, that the proposal appears feasible.

These rules involve matters relating to agency procedure and are not required by law to be published as proposed rule making. This Department, nevertheless, customarily gives such notice and public procedure thereon. However, that practice is deemed unnecessary in this instance because the procedures to be established and the requirements on the public are similar to the procedures and requirements in other existing regulations. Accordingly, these rules shall become effective upon the date of publication in the FEDERAL REGISTER.

The language of § 2244.5–6(b)(2) is amended and two new sections are added as follows:

§ 2244.5–6 Point Reyes National Seashore, California.

* * * * *

(b) *Application.* * * *

(2) Formal application: Any person desiring to effect an exchange of lands hereunder must file an application, in duplicate, on a form approved by the Director, Bureau of Land Management, or its equivalent, describing the lands by metes and bounds or other proper description. However, if the selected lands are surveyed, they must be described by legal subdivisions of the public land surveys. The application must be accompanied by the notice received from Regional Director, National Park Service, required by paragraph (a) of this section, stating that the proposal appears feasible.

* * * * *

§ 2244.5–7 Fire Island National Seashore, New York.

(a) *Authority.* The act of September 11, 1964 (78 Stat. 928, 16 U.S.C. 459e) provides for the establishment of the Fire Island National Seashore, and authorizes the Secretary of the Interior to acquire land within its boundaries. He may accept title to any nonfederally owned land located within those boundaries and convey to the grantor any federally owned land under the jurisdiction of the Secretary. The lands so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to the grantor in order to equalize the values of the lands exchanged.

(b) All the provisions of § 2244.5–6 (b) through (g) shall apply to exchanges to acquire land within Fire Island National Seashore, N.Y. For the purposes of this section, where, in § 2244.5–6, reference is made to Point Reyes National Seashore, it shall be deemed to read "Fire Island National Seashore," and reference to the act of September 13, 1962 (76 Stat. 538, 16 U.S.C. 459c) shall be deemed to read "Act of September 11, 1964 (78 Stat. 928, 16 U.S.C. 459e)." Reference to the Regional Director, National Park Service, shall mean Director of the Northeast Region.

§ 2244.5–8 Lake Mead National Recreation Area, Ariz. and Nev.

(a) *Authority.* The act of October 8, 1964 (78 Stat. 1039, 16 U.S.C. 460n) establishes the boundaries of the Lake Mead National Recreation Area in the States of Arizona and Nevada and authorizes the Secretary of the Interior to revise those boundaries, subject to a designated acreage requirement, and to procure property within the exterior boundaries of the area in such manner as he considers to be in the public interest. In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary. The properties so exchanged shall be approximately equal in fair market value, and the Secretary may accept cash from and pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

(b) All the provisions of § 2244.5–6 (b) through (g) shall apply to exchanges to acquire land within the Lake Mead National Recreation Area, Arizona and Nevada. For the purposes of this section, where in § 2244.5–6, reference is made to Point Reyes National Seashore, it shall be deemed to read "Lake Mead National Recreation Area," and reference to the act of September 13, 1962 (76 Stat. 538, 16 U.S.C. 459c) shall be deemed to read "Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C. 460n)." Reference to the Regional Director, National Park Service shall mean Director of the Southwest Region.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

MARCH 9, 1955.

[F.R. Doc. 65–2644; Filed, Mar. 15, 1965; 8:47 a.m.]

Published in 30 F.R. 3438 March 16, 1965 - Effective upon publication.

Circular Distribution List.

GPO 850-333

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2182]

PART 2210—OCCUPANCY

Subpart 2211—Homesteads

LANDS SUBJECT TO ENTRY

Section 2211.07 is revised in its entirety to read as follows:

§ 2211.07 Lands subject to entry.

(a) The laws relating to homesteads provide that homestead entry may be made on unappropriated surveyed public lands which are adaptable to agricultural use, with the following exceptions:

(1) Public lands are not subject to homestead entry if they are mineral or saline in character. However, public lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, or asphaltic minerals may be subject to homestead entry if the requirements of Subpart 2023 of this chapter are met.

(2) Public lands are not subject to homestead entry if they are occupied for purposes of trade or business.

(3) Public lands are not subject to homestead entry if they are within the limits of any withdrawal, reservation, or incorporated town or city. However, public lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, as amended, or Executive Order 6964 of February 5, 1935, as amended, or by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), are subject to homestead entry if they are so classified pursuant to Part 2410 of this chapter.

JOHN A. CARVER, Jr.,
Acting Secretary of the Interior.

MARCH 13, 1965.

[F.R. Doc. 65-2813; Filed, Mar. 18, 1965; 8:46 a.m.]

Published in 30 F.R. 3657, March 19, 1965 - Effective upon publication.

Circular Distribution List

GPO 848-871

Repl. by C-2185

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2183]

PART 2210—OCCUPANCY

Subpart 2212—Native Allotments

ALASKA

1. Section 2212.0–3(c) is revoked in its entirety.

2. Section 2212.0–7(b) is revoked in its entirety.

3. Sections 2212.9, 2212.9–1, 2212.9–2, 2212.9–3, 2212.9–4 and 2212.9–5 are revised in their entirety to read as follows:

§ 2212.9 Alaska.

§ 2212.9–1 General.

(a) *Authority.* The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357, 357a, 357b), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), of vacant, unappropriated, and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age.

(b) *Objectives.* It is the program of the Secretary of the Interior to enable individual natives of Alaska to acquire title to the lands they use and occupy and to protect the lands from the encroachment of others.

(c) *Definitions.* As used in the regulations in this section,

(1) The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

(2) "Allotment" is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and which shall be deemed the "homestead" of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress.

(3) "Allotment Act" means the Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357, 357a, 357b).

§ 2212.9–2 Availability, size and nature.

(a) A Native may be granted a single allotment of not to exceed 160 acres of land. All the lands in an allotment need not be contiguous but each separate tract of the allotment should be in reasonably compact form.

(b) In areas where the rectangular survey pattern is appropriate, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

(c) Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(d) Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2023.5 of this chapter.

§ 2212.9–3 Applications.

(a) Applications for allotment properly and completely executed on a form approved by the Director, Bureau of Land Management, must be filed in the land office which has jurisdiction over the lands.

(b) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters shall be considered a request for waiver of the 160-rod limitation (see Part 2024 of this chapter).

(c) If surveyed, the land must be described in the application according to legal subdivisions and must conform to the plat of survey when possible. If unsurveyed, it must be described as accurately as possible by metes and bounds and tied to natural objects. On unsurveyed lands, the application should be accompanied by a map or approved protracted survey diagram showing approximately the lands included in the application.

Published in 30 F.R. 3710, March 20, 1965 - Effective upon publication.

Circular Distribution List

(d) An application for allotment shall be rejected unless the authorized officer of the Bureau of Indian Affairs certifies that the applicant is a native qualified to make application under the Allotment Act, that the applicant has occupied and posted the lands as stated in the application, and that the claim of the applicant does not infringe on other native claims or area of native community use.

(e) The filing of an acceptable application for allotment will segregate the lands. Thereafter subsequent conflicting applications for such lands shall be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned use and occupancy of the land.

(f) By the filing of an application for allotment the applicant acquires no rights except as provided in paragraph (e) of this section. If the applicant does not submit the required proof within six years of the filing of his application in the land office, has application for allotment will terminate without affecting the rights he gained by virtue of his occupancy of the land or his right to make another application.

§ 2212.9–4 Proof of use and occupancy.

(a) An allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. Such proof shall be made on a form approved by the Director, Bureau of Land Management, and filed in the appropriate land office. If made by the applicant, it must be signed by him, but if he is unable to write his name, his mark or thumb print shall be impressed on the statement and witnessed by two persons. This proof may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or may be made at any time within six years after the filing of the application when the requirements have been met.

§ 2212.9–5 Effect of allotment.

(a) Land allotted under the Act is the property of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. However, a native of Alaska who received an allotment under the Act, or his heirs, may with the approval of the Secretary of the Interior or his authorized representative, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is a native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

(b) Application by an allottee or his heirs for approval to convey title to land allotted under the Allotment Act shall be filed with the appropriate officer of the Bureau of Indian Affairs.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

MARCH 16, 1965.

[F.R. Doc. 65–2877; Filed, Mar. 19, 1965; 8:47 a.m.]

GPO 848-938

Repl. by C-2232

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2184]

PART 2030—SPECIAL CONSIDERATIONS

Subpart 2033—Veterans

NOTICE OF MILITARY SERVICE

The purpose of this amendment is to conform the regulations to the act of October 17, 1940 (54 Stat. 1187, 50 U.S.C. App. 561) by providing that notice of military service and of the desire to hold a claim under the act must be filed only by entrymen under the desert land laws, claimants of mining locations, and holders of mineral permits or leases, for them to obtain the benefits of the act.

These rules involve matters relating to public property and are not required to be published as proposed rule making. This Department, nevertheless, customarily gives such notice and public procedure thereon. However, that practice is deemed unnecessary in this instance because the amendment relates to agency procedure. Accordingly, these rules shall become effective upon the date of publication in the FEDERAL REGISTER.

1. Section 2033.2–4(a) is amended to read as follows:

§ 2033.2–4 Notice, proof, required.

(a) *Notice.* (1) Where notice of entrance into military service and of a desire to hold claims or obtain benefits is required by the act of October 17, 1940 (54 Stat. 1187, 50 U.S.C. App. sections 561–572) (except notice of a mining location), it shall be given on a form approved by the Director to the proper land office, as provided in § 1821.2–1(b)(1) of this chapter, within 6 months after entrance into service.

(2) A claimant of a mining location shall, in accordance with § 2033.2–7, give notice of his military service before the close of the assessment year.

(3) Notice shall be by registered mail unless it is filed personally in the proper office by the claimant or by his agent.

* * * * *

2. The last sentence of § 2033.2–5(a) is deleted so that the paragraph reads as follows:

§ 2033.2–5 Homesteads.

* * * * *

(a) *Credit for military service.* Any person having a valid homestead settlement claim, or any person who has made homestead application for public lands which is allowed after the date of the filing thereof, or any homestead entryman whose application has been allowed, who after such settlement, application or entry enters the military service, is entitled, in the administration of the homestead laws, to have his military service construed to be equivalent to residence and cultivation upon the tract settled upon or entered, for the period of such service. Moreover, if he is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability will be deducted from the required length of residence, without reference to the time of actual service No patent will issue, however, until he has resided upon, improved and cultivated his homestead for a period of at least 1 year. He will be entitled during each year's required residence to a 5 months' leave of absence, in like manner as any other homesteader.

* * * * *

3. Section 2033.2–9(e) is amended to read as follows:

§ 2033.2–9 Leases, permits, licenses, and claims.

* * * * *

(e) In order to obtain the benefits of section 506 of the act, a permittee or lessee of public domain under the Federal mineral leasing laws shall file a notice of his entrance into military service and of his desire to avail himself of the benefits of that section, in accordance with § 2033.2–4(a).

* * * * *

4. Section 2033.2–7(c) is amended to read as follows:

§ 2033.2–7 Mining claims.

* * * * *

(c) If application for patent to the mining claim has been made, notice to the Bureau of Land Management of the applicant's entrance into military service is desirable, but not mandatory.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 7, 1965.

[F.R. Doc. 65–3843; Filed, Apr. 13, 1965; 8:46 a.m.]

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Circular Distribution List

GPO 849-562

Circular No. 2185

Regulations pertaining to:

Replaced by Circ 2295

OCCUPANCY on the PUBLIC LANDS

Native Allotments

43 CFR 2212

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

APRIL 15, 1965

Subpart 2212—Native Allotments

2212.0–3 Authority.
2212.0–6 Qualifications of applicants.
2212.0–7 Land subject to allotment.
2212.1 Procedures.
2212.1–1 Petitions and applications.
2212.1–2 Contents of application.
2212.1–3 Effect of application.
2212.1–4 Application for unsurveyed lands.
2212.2 Allotments.
2212.2–1 Certificate of allotment.
2212.2–2 Trust patent.
2212.2–3 Allotments within national forests.
2212.3 Adverse actions.
2212.3–1 Charges and protests against Indian allotments.
2212.3–2 Notice of action.
2212.4 Disposal of trust allotments.
2212.5 Relinquishments.
2212.9 Alaska.
2212.9–1 Applications.
2212.9–2 Proof.
2212.9–3 Number of allotments; contiguity.
2212.9–4 Approval of conveyances.

AUTHORITY: The provisions of this Subpart 2212 issued under R.S. 2478; 43 U.S.C. 1201. Also issued under 34 Stat. 197, 48 U.S.C. 357.

§ 2212.0–3 Authority.

(a) *General Allotment Act of February 8, 1887.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the act of February 28, 1891 (26 Stat. 794), and section 17 of the act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 336), provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

(b) *Act of March 1, 1933.* The act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

Public land withdrawn by Executive Order 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until such setilement has been authorized by classification. See Subpart 2411 of this chapter.

§ 2212.0–6 Qualifications of applicants.

(a) *General.* An applicant for allotment under the fourth section of the act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

(b) *Certificate that applicant is Indian and entitled to allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and entitled to such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2212.1–1(b).

(c) *Heirs of Indian settlers and applicants.* (1) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(2) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open

to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(3) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

(d) *Minor children.* An Indian settler on public lands under the fourth section of the act of February 8, 1887, as amended, is also entitled upon application to have allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one entitled himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not entitled to allotments on the public-domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

(e) *Indian wives.* (1) Where an Indian woman is married to a white man or other person not entitled to an allotment under the fourth section of the act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such women and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(2) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise entitled, and also for her minor children where her husband is for any reason disqualified.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

(f) *Citizenship.* (1) Under section 6 of the act of February 8, 1887 (24 Stat. 390; 25 U.S.C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(2) The act of May 8, 1906 (34 Stat. 182; 8 U.S.C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(3) The act of June 2, 1924 (43 Stat. 253, 8 U.S.C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

§ 2212.0–7 Land subject to allotment.

(a) *General.* (1) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(2) Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

(3) Where an Indian makes settlement in good faith upon lands not reserved therefrom, an allotment therefor can not be denied on the ground that the lands are too poor in quality. Also, where settlement was made in good faith, the presence of valuable timber does not warrant the rejection of the allotment.

(4) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

§ 2212.1 Procedures.

§ 2212.1–1 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see § 2212.2–3 of this part) must file with the manager of the land office for the district in which the land is situated, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and entitled to allotment, as specified in § 2212.0–6(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

§ 2212.1–2 Contents of application.

(a) The nature, character, and extent of the settlement, as well as the manner in which performed, must be fully set forth in the allotment application. In examining the acts of settlement and determining the intention and good faith of an Indian applicant, due and reasonable consideration should be given to the habits, customs, and nomadic instincts of the race, as well as to the character of the land taken in allotment.

(b) While the act contains no specific requirements as to what shall constitute settlement, it is evident that the Indian must definitely assert a claim to the land based upon the reasonable use or occupation thereof consistent with his mode of life and the character of the land and climate.

§ 2212.1–3 Effect of application.

(a) An allotment application under the fourth section of the act of February 8, 1887, as amended, filed prior to September 23, 1913, does not, in the absence of a certificate from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and subsequent applications for the same land may be received and suspended to await final action on the allotment application.

(b) Where an allotment application under the fourth section, filed subsequent to September 23, 1913, is not accompanied by the requisite certificate from the Indian Office showing the applicant to be entitled to allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(c) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

§ 2212.1–4 Application for unsurveyed lands.

(a) An allotment application under the fourth section of the act of February 8, 1887, as amended, for unsurveyed lands must conform to the following rules along the lines of those found in § 1821.7–1 of this chapter.

(1) It must contain a description of the land by metes and bounds, with courses, distances, and references to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass, unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or objects need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, watercourses, or other natural objects will not be permitted.

(2) An allotment to a minor child need not be contiguous to that made by the head of a family; but it is required that each allotment made to an individual, whether the head of a family, a

(e) The application must be filed with the manager of the land office for the district in which the land applied for is located. He will then forward the case to the Bureau of Indian Affairs for consideration. If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

(f) The provisions of said section are not limited to Indians occupying, living on, or having improvements on lands within a national forest at the date of the passage of the act, but apply also to Indians whose settlement, occupation, or improvements occurred subsequent to the passage of the act.

(g) The listing and opening to entry of lands under the provisions of the Forest Homestead Act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), do not preclude their being taken as an allotment under section 31.

(h) An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the act of February 8, 1887, as amended, apply equally to applications under said section 31.

§ 2212.3 Adverse actions.

§ 2212.3–1 Charges and protests against Indian allotments.

(a) The act of April 23, 1904 (33 Stat. 297; 25 U.S.C. 343), limits the jurisdiction of the Secretary of the Interior to cancel first or trust patents issued on Indian allotments to specific instances, without authority from Congress. In view of the fact that information respecting the classes defined in said act is obtainable from the records of the Department of the Interior no charges preferred as to those classes will be entertained. Third parties are never invited to attack Indian allotments with the hope or expectation of securing any advantage by reason of such attack. Such parties must assume and pay the expense of a hearing, but at the same time they acquire no preference right to enter the land in the event of the cancellation of the allotment, and this whether first or trust patent has issued or not. Section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), does not apply to proceedings of this character.

(b) However, where a party claims equitable rights to lands covered by an Indian allotment for which trust patent has been issued, on account of prior settlement and improvements, a hearing may be ordered with the view of recommending to Congress that such patent be cancelled, if the showing made at the hearing justifies such action. In this class of cases, and in cases of charges preferred against allotments on which trust patents have not issued, the following rules will be observed:

(1) The charges must be filed in the proper land office in the form of a duly corroborated affidavit, clearly setting forth the specific grounds for such charges. The manager will give the Bureau of Indian Affairs full information thereof.

(2) Where it is charged that the lands applied for are not of the character subject to allotment, that the required settlement has not been made, that the contestant has a prior and better claim, and that the applicant for allotment is not seeking to obtain the land in good faith but is acting in the interest of another person not entitled thereto, the State Director will cause a preliminary investigation to be made as to the truth and merits of the charges, if such action is deemed necessary. The charges will be dismissed unless they appear to be probably true.

(3) If sufficient showing is made, a hearing will be had before the proper land officer after due notice to all parties. The taking of testimony and other proceedings in such hearings will be in accordance with Parts 1840 and 1850 of this chapter, governing proceedings before the manager.

(c) Nothing in the foregoing will prevent the Department from accepting an Indian's relinquishment of an unpatented allotment and directing its cancellation if, after the charges are filed, it is shown that the allotment ought to be canceled.

(d) Third parties are not privileged to intervene in proceedings to determine whether lands applied for are of the character subject to allotment or as to the right of the Indian to an allotment as this is a matter resting solely in the judgment of the Department.

single adult, or a minor child, when such allotment embraces more than one legal subdivision, must be composed of contiguous tracts, as in ordinary disposition of the public domain under a settlement law. An additional allotment must be governed by the same rule.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished, or if this cannot be done, a statement must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager upon the filing of the township plat in the land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 90 days. In default of action by the party notified, the manager will promptly adjust the claim to the public land survey, if possible.

(d) Notice of the application describing the land as above directed must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application.

§ 2212.2 Allotments.

§ 2212.2–1 Certificate of allotment.

(a) When the manager approves an application for allotment, he will issue to the applicant a "certificate of allotment", on a prescribed form, showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

§ 2212.2–2 Trust patent.

(a) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued, will run from the date of suspension.

(b) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

§ 2212.2–3 Allotments within national forests.

(a) By the terms of section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests.

(b) An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

(c) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(d) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

§ 2212.3–2 Notice of action.

Notice to Indian allottees, or to their parents, if minors, of any action adverse to their interests must be given by registered letter to the proper Indian superintendent, as well as to the party in interest.

§ 2212.4 Disposal of trust allotments.

The existing laws and regulations relating to the sale of allotted Indian lands, the determination of heirs, the issuance of patents in fee, the disposal of trust allotments by will, and the extension of the trust period, applicable to reservation allotments under the provisions of the act of February 8, 1887, as amended, are equally applicable to allotments made under the fourth section of said act.

§ 2212.5 Relinquishments.

(a) Relinquishments of Indian allotments, if filed in a land office, will be transmitted to the Commissioner of Indian Affairs for consideration and recommendation. Where the application has not been approved, the Commissioner of Indian Affairs has authority to accept or reject the relinquishment, as he may deem proper. Where the allotment application has been approved, the acceptance or rejection must be concurred in by the Commissioner of Indian Affairs. On the acceptance of a relinquishment, the Bureau of Land Management will be notified of the fact. The land affected will not become subject to entry until after the manager has noted the fact of the relinquishment and cancellation on his records.

(b) The manager will, in case of a relinquishment, filed by an Indian, of an allotment application, or of a homestead entry, under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), require the party to write at the foot of the regular form provided for relinquishments, or upon the back thereof, a clear statement of his reasons for desiring to make such relinquishment.

§ 2212.9 Alaska.

§ 2212.9–1 General.

(a) *Authority.* The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357, 357a, 357b), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), of vacant, unappropriated, and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age.

(b) *Objectives.* It is the program of the Secretary of the Interior to enable individual natives of Alaska to acquire title to the lands they use and occupy and to protect the lands from the encroachment of others.

(c) *Definitions.* As used in the regulations in this section,

(1) The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

(2) "Allotment" is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and which shall be deemed the "homestead" of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress.

(3) "Allotment Act" means the Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357, 357a, 357b).

§ 2212.9–2 Availability, size and nature.

(a) A Native may be granted a single allotment of not to exceed 160 acres of land. All the lands in an allotment need not be contiguous but each separate tract of the allotment should be in reasonably compact form.

(b) In areas where the rectangular survey pattern is appropriate, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

(c) Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(d) Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2023.5 of this chapter.

§ 2212.9–3 Applications.

(a) Applications for allotment properly and completely executed on a form approved by the Director, Bureau of Land Management, must be filed in the land office which has jurisdiction over the lands.

(b) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters shall be considered a request for waiver of the 160-rod limitation (see Part 2024 of this chapter).

(c) If surveyed, the land must be described in the application according to legal subdivisions and must conform to the plat of survey when possible. If unsurveyed, it must be described as accurately as possible by metes and bounds and tied to natural objects. On unsurveyed lands, the application should be accompanied by a map or approved protracted survey diagram showing approximately the lands included in the application.

(d) An application for allotment shall be rejected unless the authorized officer of the Bureau of Indian Affairs certifies that the applicant is a native qualified to make application under the Allotment Act, that the applicant has occupied and posted the lands as stated in the application, and that the claim of the applicant does not infringe on other native claims or area of native community use.

(e) The filing of an acceptable application for allotment will segregate the lands. Thereafter subsequent conflicting applications for such lands shall be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned use and occupancy of the land.

(f) By the filing of an application for allotment the applicant acquires no rights except as provided in paragraph (e) of this section. If the applicant does not submit the required proof within six years of the filing of his application in the land office, has application for allotment will terminate without affecting the rights he gained by virtue of his occupancy of the land or his right to make another application.

§ 2212.9–4 Proof of use and occupancy.

(a) An allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. Such proof shall be made on a form approved by the Director, Bureau of Land Management, and filed in the appropriate land office. If made by the applicant, it must be signed by him, but if he is unable to write his name, his mark or thumb print shall be impressed on the statement and witnessed by two persons. This proof may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or may be made at any time within six years after the filing of the application when the requirements have been met.

§ 2212.9–5 Effect of allotment.

(a) Land allotted under the Act is the property of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. However, a native of Alaska who received an allotment under the Act, or his heirs, may with the approval of the Secretary of the Interior or his authorized representative, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is a native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

(b) Application by an allottee or his heirs for approval to convey title to land allotted under the Allotment Act shall be filed with the appropriate officer of the Bureau of Indian Affairs.

This circular supersedes Circulars 2172 & 2183.

GPO 849-489

Repl. by C-2235

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT
(2000)

[Circular 2186]

PART 2230—SPECIAL USES

Subpart 2235—Leases

AIRPORT AND AVIATION FIELDS; APPLICATIONS

The purpose of this amendment is to clarify § 2235.1–1(d) to show that any political subdivision or instrumentality of a State may apply for a lease of public lands for use as a public airport under the Act of May 24, 1928 (45 Stat. 728), as amended (49 U.S.C. 211–214).

These rules involve matters relating to public property and are not required by law to be published as proposed rule making. This Department, nevertheless, customarily gives such notice and public procedure thereon. However, that practice is deemed unnecessary in this instance because this amendment merely clarifies the regulation. Accordingly, this amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 2235.1–1(d) is amended to read as follows:

§ 2235.1–1 Airport and aviation fields—Act of May 24, 1928.

* * * * *

(d) *Applications.* (1) Applications under the Act may be made by: Any citizen of the United States; any group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; any State or any political subdivision or instrumentality thereof, including counties and municipalities.

(2) No specific form of application is required.

(3) Each application must clearly describe the land applied for, must be signed by the applicant or by a duly authorized agent or officer.

(4) Each application must be accompanied by a non-refundable service fee of $10. However, no service fee will be required from a State or political subdivision or instrumentality thereof.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

APRIL 14, 1965.

[F.R. Doc. 65–4194; Filed, Apr. 21, 1965; 8:47 a.m.]

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Circular Distribution List

Repl. by C-2308

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2187]

PART 2240—SALES AND EXCHANGES

Subpart 2242—Townsites

ISSUANCE OF CERTIFIED STATEMENTS

On page 2263 of the FEDERAL REGISTER of February 19, 1965, there was published a notice and text of a proposed amendment of § 2242.6 to add a new section to provide procedures for the issuance of certified statements as to information contained in Bureau of Land Management records concerning trustee's deeds which conveyed title to lots included in townsites in Oklahoma.

Interested persons were given 30 days within which to submit written comments, suggestions or objections with respect to the proposed amendment. No comments, suggestions or objections have been received, and the proposed amendment is hereby adopted without change and is set forth below. This amendment shall become effective on publication in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 14, 1965.

§ 2242.6–4 Certified statements.

(a) *Authority.* The act of May 14, 1890 (26 Stat. 109, 43 U.S.C. 1111) authorized trustees appointed by the Secretary of the Interior to enter lands as townsites, and, in the execution of their trusts, to convey title to such property. When, by the act of July 7, 1898 (30 Stat. 674, 43 U.S.C. 1111) all boards of trustees for townsites were abolished, the Commissioner of the General Land Office was vested with the authority to complete the trusts. The functions of the Commissioner of the General Land Office were transferred to the Secretary of the Interior by Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

(b) *Procedures.* (1) Upon application, and the payment of a nonrefundable service fee of $20, the authorized officer may issue a statement certifying to the information and data contained in the records of the Bureau of Land Management concerning the issuance of trustee's deeds which conveyed title to lots included in townsites in Oklahoma.

(2) No form of application is required. However, the application shall contain sufficient information to identify the tract or lot involved, and the person to whom the deed was issued.

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GPO 849 - 753

FEDERAL REGISTER

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

Circular No. 2188

PART 3160—PHOSPHATE LEASES; PROSPECTING PERMITS AND USE PERMITS

Notice of Lease Offer

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended, and section 2470 of the Revised Statutes (43 U.S.C. 1201), it is proposed to amend 43 CFR Subpart 3162 as set forth below.

The purpose of the amendment is to remove from § 3162.6 a provision that is in conflict with the provisions of § 3162.3 relating to minimum production. Section 3162.6(c) provides for cancellation of a lease if production is not commenced within 4 years, while in § 3162.3, it is anticipated that a lease may continue beyond 4 years without production by providing for the payment of a minimum royalty in lieu of production beginning with the fourth year. Considerable confusion has arisen as the result of the inconsistency between the provisions of these two sections. Since the provisions of § 3162.6(c) concern matters which must be included in the notice of lease offer it is not controlling on the matter of minimum production because it conflicts with the substantive provisions of § 3162.3. In order to remove this conflict, the regulations are being amended to eliminate § 3162.6(c). This amendment becomes effective upon publication.

Section 3162.6 is amended to read as follows:

§ 3162.6 Notice of lease offer.

Notice of the offer of lands for lease will be by publication once a week for 4 consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will show the time and place of sale; whether the sale will be at public auction or by sealed bids; the description of the lands; and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the high bidder to pay for publication of that notice may be obtained. It will also contain a statement that sealed bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening of the bids. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted and statements (a) that the high bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared; (b) that the terms of minimum production will not be reduced or waived at the lessee's request except as provided in §§ 3162.3, 3162.4, 3102.3, and 3102.4, or upon satisfactory showing that market conditions are such that the lessee cannot operate except at a loss; and (c) that the Government reserves the right to reject any and all bids. The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 7, 1965.

[F.R. Doc. 65-3844; Filed, Apr. 13, 1965; 8:49 a.m.]

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Circular Distribution List

GPO 849-563

CIRCULAR NO. 2189

Regulations pertaining to

ACQUIRED LANDS LEASING ACT

As contained in Title 43 Code of Federal Regulations

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MAY 1, 1965

Group 3200—Mineral Leasing on Acquired Lands

PART 3210—ACQUIRED LANDS LEASING ACT

Subpart 3210—Acquired Lands Leasing Act; General

Sec.
3210.0–3 Authority.
3210.0–6 Sale of conveyance of lands.

Subpart 3211—Land Open Under Act

3211.1 Lands and deposits to which the act does not apply.
3211.2 Stipulations and consent of agency having jurisdiction of land.
3211.3 Other regulations applicable; lease forms, applications, and offers.

Subpart 3212—Lease Requirements

3212.1 Supplemental information required in offers and applications for leases and permits; place of filing.
3212.2 Restriction on holdings.
3212.3 Leases of future or fractional interests.
3212.4 Offer to lease and issuance of lease.
3212.5 Exchange of leases.

AUTHORITY: The provisions of this Part 3210 issued under sec. 10, 61 Stat. 915; 30 U.S.C. 359.

Subpart 3210—Mineral Leasing on Acquired Lands; General

§ 3210.0–3 Authority.

(a) The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359) and referred to in this part as "the act," authorizes the Secretary of the Interior to issue permits and leases for deposits of oil, gas, oil shale, coal, phosphate, sodium and potassium in lands acquired by the United States subject to the same conditions as contained in the mineral leasing laws of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C. 181–263), February 7, 1927 (44 Stat. 1057), as amended (30 U.S.C. 281–287), and in all laws which amend or supplement these mineral leasing laws. The act also authorizes the issuance of permits and leases for sulphur deposits in such acquired lands, wherever situated, subject to all other conditions contained in the act of April 17, 1926 (44 Stat. 301), as amended (30 U.S.C. 271–276).

(b) The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV), as to the above-enumerated minerals, except as to leases or permits outstanding on August 7, 1947.

§ 3210.0–6 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

Subpart 3211—Lands Open Under Act

§ 3211.1 Lands and deposits to which the act does not apply.

The act does not apply to lands:

(a) Acquired for the development of their mineral deposits,

(b) Acquired by foreclosure or otherwise for resale,

(c) Reported as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.).

(d) In incorporated cities, towns, and villages,

(e) In national parks and monuments,

(f) Set apart for military or naval purposes, including lands within naval petroleum and oil shale reserves, or

(g) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ 3211.2 Stipulations and consent of agency having jurisdiction of land.

(a) Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being adminstered.

(b) All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project,

if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(c) Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

§ 3211.3 Other regulations applicable; lease forms, applications, and offers.

Except as otherwise specifically provided in this part the regulations prescribed under the mineral leasing laws, and contained in Group 3100 of this chapter, shall govern the disposal and development of minerals under the act to the extent that they are not inconsistent with the provisions of the act. All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

Subpart 3212—Lease Requirements

§ 3212.1 Supplemental information required in offers and applications for leases and permits; place of filing.

(a) Each offer or application for a lease or permit must (1) contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally-owned acquired lands in the same State; (2) be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system), and (3) describe the lands for which the lease or permit is desired as follows:

(i) If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(ii) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in

the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(iii) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

(iv) Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

(v) The offeror or applicant must, if practicable, give the name of the administrative unit or project of which the lands applied for are a part.

(b) An application or offer under the act must be filed in the proper land office as set forth in § 3212.4. Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

§ 3212.2 Restriction on holdings.

The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchargeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3212.3 Leases of future or fractional interests.

(a) *General.* Subject to the provisions of section 3 of the Act, non-competitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. There is no required form for applications or offers for non-competitive leases of any mineral subject to the Act, except oil and gas. However, such applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3211.2, 3211.3, 3212.1 and this section. The terms and conditions of leases covering future or fractional interests in mineral deposits other than oil and gas, of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements under § 3120.3–1 covering future or fractional interests, will be established on an individual case basis.

(b) *Offers to lease and leases covering future interests in oil and gas deposits.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. An application for a future interest lease filed less than one year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3211.2, 3211.3, and 3212.1 and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract.

In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made. Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement as consideration for issuance of lease on future interest in oil and gas deposits.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate an agreement for approval by the Director. Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable: when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular terms of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Offers for fractional interest oil and gas leases other than future fractional interests.* An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3212.4 Offer to lease and issuance of lease.

(a) Except as provided in § 3123.9, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions, or other changes or advertising.

An official form approved by the Director, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management.

(b) Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the land office for the State or land district in which the land is situated, or for land or deposits in States for which there are no land offices, with the Bureau of Land Management, Washington, D.C., 20240, except that offers for lands or deposits in North Dakota or South Dakota, must be filed in the land office at Billings, Montana; for lands or deposits in Nebraska or Kansas in the land office at Cheyenne, Wyoming; and for lands or deposits in Oklahoma and Texas in the land office at Santa Fe, New Mexico. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) Each offer must describe the lands as required by § 3212.1 and may not include more than 2,560 acres except where the rule of approximation applies. That portion of § 3123.1 providing that an offer may not be made for less than 640 acres is not applicable to acquired lands lease offers. Each offer should specify, if possible, the name of the governmental agency having jurisdiction over the surface of the land and also the unit of the project involved.

(d) Except as provided in § 3123.4 an offer which is not filed in accordance with the applicable regulations in Part 3120 or in this part will be rejected and will afford the applicant no priority.

(e) Leases for a whole or fractional future interest will be issued on a form approved by the Director. Such leases will be sent to applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

§ 3212.5 Exchange leases.

(a) Oil and gas leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act. New leases shall be issued for a term of five years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effective as of the first of the month after the filing of the application to exchange. The rental rates for the new lease, for lands not within the known geologic structure of a producing oil or gas field at the time of the filing of the application for exchange, shall be the same as those set forth in § 3125.1, and the royalty rate for such lands shall be 12½ percent. For all other lands, the rental rate for the new lease shall be $1.00 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

(b) Coal, phosphate, sodium, potassium, sulphur, or oil shale leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act subject, in each case, to such appropriate conditions as may be prescribed.

This circular supersedes circulars 2034, 2081, 2135, 2136, 2168, the portion of circular 2048 pertaining to §200.1 thru §200.10, and the portion of circular 2178 pertaining to Part 3210.

GPO 849-968

Circular No. 2190

Superseded by circ 2190

GRAZING REGULATIONS for the PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT

Charles H. Stoddard, Director

May 1965

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts), provides regulations (pursuant to Section 15 of the Taylor Grazing Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts because of their scattered location pattern.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within grazing districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

TABLE OF CONTENTS

REGULATIONS FOR INSIDE GRAZING DISTRICTS

Page

Part 4110 – Grazing Administration (Inside Grazing Districts) 1

Subpart 4110 – Grazing Administration (Inside Grazing Districts) General 2

Subpart 4111 – Awards of Grazing Privileges 4

Subpart 4112 – Management Practices 8

Subpart 4113 – Supervision and Inspection 9

Subpart 4114 – Advisory Boards and Local Associations 9

Subpart 4115 – Records and Administrative Procedures 12

Part 9230 – Trespass 22

Section 9239.3–2 – Inside Grazing Districts 22

Part 1850 – Hearings Procedures 25

Subpart 1853 – Grazing Procedures 25

REGULATIONS FOR OUTSIDE GRAZING DISTRICTS

Part 4120 – Grazing Administration (Outside Grazing Districts) 29

Subpart 4122 – Grazing Leases (Section 15 – Taylor Grazing Act) 29

Part 9230 – Trespass 36

Section 9239.3–1 – Outside Grazing Districts 36

CODE OF FEDERAL REGULATIONS CROSS REFERENCE

REDESIGNATION TABLE

Grazing Administration (Inside Grazing Districts)

Old	New
161.1(a)	4110.0–2
161.1(b)	4111.3–1(c)
161.1(c)	4111.3–2(b)
161.2	4110.0–5
161.3	4111.1
161.4	4111.2
161.5(a)	4111.3–1(a)
161.5(b)	4111.3–1(b)
161.5(c)	4112.2
161.5(d)	4111.3–2(a)
161.5(e)	4111.4–2(f)
161.6(a)	4111.3–1(d)(1)
161.6(b)(1)	4111.3–1(d)(2)
161.6(b)(2)	4115.2–1(g)
161.6(c)	4115.2–1(h)
161.6(d)	4115.2–1(i)
161.6(e)	4115.2–1(e)
161.6(f)	4111.4–2(a) to (e)
161.6(g)(1)	4111.3–2(c)
161.6(g)(2)	4111.4–1
161.6(h)	4111.3–2(d)
161.6(i)	4115.2–1(j)
161.6(j)	4115.2–1(f)
161.7	4115.2–2
161.8	4115.2–1(k)
161.9	4115.2–1 (a), (b), (c), (d)
161.10	4115.2–3, 1853
161.11	4112.3
161.12	4113.1, 9239.3–2
161.13(a)	4114.1–1
161.13(b)	4114.1–2
161.13(c)	4114.1–3
161.13(d)	4114.1–4
161.13(e)	4114.1–5
161.13(f)	4114.2–1
161.13(g)	4114.3–1
161.13(h)	4114.2–2, 3–2
161.14	4114.4
161.15	4115.2–5(a)
161.16	4115.2–4
161.17	4115.2–5(b)
161.18	4115.2–6
161.19	4110.0–3(a)

Trespass (Inside Grazing Districts)

161.12	4113.1, 9239.3–2

Hearings Procedures (Inside Grazing Districts)

161.10	4115.2–3, 1853

Grazing Administration (Outside Grazing Districts)

160.1	4122.0–3
160.2	4122.0–5
160.3	4122.1–2
160.4	4122.1–1
160.5	4122.2–1, 4122.2–2, 4122.3–1(a)
160.6	4122.2–3
160.7	4122.2–6
160.8	4122.3–2
160.9	4122.2–4
160.10	4122.2–5, 4122.3–1 (a) to (d)

Old	New
160.11	4122.5–3
160.12	4122.3–5
160.13	4122.5–1, 4122.5–4
160.14	4122.3–3, 4122.5–5
160.15	4122.3–1(b)
160.16	4122.3–1(c)
160.17	4122.4–1, 4122.4–2, 4122.4–3
160.18	4122.4–4
160.19	4122.6
160.20	4122.5–2
160.21	4122.3–1(e), 4122.3–4
160.22	4122.5–6, 9239.3–1
160.23	4122.7
160.24	4122.8

Trespass (Outside Grazing Districts)

160.22	4122.5–6, 9239.3–1

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

Sec.

4110.0–2 Objectives.
4110.0–3 Authority.
4110.0–5 Definitions.

Subpart 4111—Awards of Grazing Privileges

4111.1 Qualifications of applicants.
4111.1–1 Qualifications.
4111.1–2 Effect of transfer arising through operation of law.
4111.2 Base property qualifications and classification.
4111.2–1 Minimum requirements; classification of base property.
4111.3 Adjudication and apportionment of grazing privileges.
4111.3–1 Mandatory requirements; rating & classification of Federal Range.
4111.3–2 Procedures.
4111.4 Adjustments of grazing privileges.
4111.4–2 Increase.
4111.4–3 Reduction.

Subpart 4112—Management Practices

4112.2 Designation of ranges for particular kinds of livestock.
4112.3 General rules of the range.
4112.3–1 Acts prohibited.
4112.3–2 Rules of fair range practice.

Subpart 4113—Supervision and Inspection

4113.1 Procedure for enforcement of rules and regulations.

Subpart 4114—Advisory Boards and Local Associations

4114.1 Grazing district advisory boards.

Sec.

4114.1–1 Authorization for establishment; number of members; qualifications.
4114.1–2 Election; time and place; the general procedures.
4114.1–3 Appointment; term of office; removal; vacancies.
4114.1–4 Meetings; organization.
4114.1–5 Functions and duties of district advisers; limitations.
4114.2 State advisory boards.
4114.2–1 Membership and meetings.
4114.2–2 Functions and duties.
4114.3 National Advisory Board Council.
4114.3–1 Membership and meetings.
4114.3–2 Functions and duties.
4114.4 Local associations of stockmen.
4114.4–1 Organization.
4114.4–2 Articles of incorporation; constitutions; by-laws.
4114.4–3 Powers.
4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Subpart 4115—Records and Administrative Procedures

4115.2 Procedures.
4115.2–1 License and permit procedures, requirements and conditions.
4115.2–2 Transfers and relinquishments.
4115.2–3 Appeals and hearings.
4115.2–4 Special rules for grazing districts.
4115.2–5 Range improvements and contributions.
4115.2–6 Pledge of licenses and permits as security for loans.

AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

SOURCE: The provisions of this Part 4110 appear at 29 F.R. 4602, Mar. 31, 1964, unless otherwise noted.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promtoe the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during

all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of

the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(c) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under paragraphs (a) or (b) of this section.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year

period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit

or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands: The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increase.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have

been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 **Reduction.**

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or

proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with subpart 2412 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period,

after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecing nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the

State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash,

property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licenses and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to

the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficent, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3(a).

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–3 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under § 4111.4–3 (a) (3), (c), and 9239.3–2 (e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use li-

cense, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner termi-

nated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii)(*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for

crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made. A permit may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee

or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for per-*

mits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the

loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(b) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the

extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been willful and the range manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which pro-

hibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c)(2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as

practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

SUBCHAPTER A—GENERAL MANAGEMENT
(1000)

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a deci-

sion. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the

opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

Sec.
4122.0–3 Authority.
4122.0–5 Definitions.
4122.1 Conditions.
4122.1–1 Qualifications of applicants.
4122.1–2 Classes of applicants; preference rights.
4122.2 Application for lease.
4122.2–1 Applications.
4122.2–2 Filing fee.
4122.2–3 No right conferred by application prior to lease.
4122.2–4 Action on defective application or where the lands applied for are not subject to leasing.
4122.2–5 Conflicting applications.
4122.2–6 Protests.
4122.3 Leases.
4122.3–1 Issuance of leases.
4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.
4122.3–3 Rentals; schedule of grazing fees; billing notices; effect of failure to pay.
4122.3–4 Assignment of lease.
4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.
4122.4 Construction, maintenance, and removal of improvements.
4122.4–1 Permit required.
4122.4–2 Applications for permits and cooperative agreements.
4122.4–3 Action on applications.
4122.4–4 Removal of improvements.
4122.5 Supervision and management of leased lands.
4122.5–1 Access.
4122.5–2 Inspection of leased premises.
4122.5–3 Reduction in leased area; adjustments of grazing use to conform with grazing capacity.
4122.5–4 Temporary closing of leased area.
4122.5–5 Crossing permits.
4122.5–6 Trespass.
4122.6 Cancellation.
4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.
4122.8 Appeals; filing.

AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

§ 4122.0–3 Authority.

Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only.

§ 4122.0–5 Definitions.

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D.C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 4122.1 Conditions.

§ 4122.1–1 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided,* That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the

date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 4122.1–2 Classes of applicants; preference rights.

The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[1]

[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 4122.2 Application for lease.

§ 4122.2–1 Applications.

An application for lease shall be executed in triplicate on a form approved by the Director and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.

§ 4122.2–2 Filing fee.

A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

§ 4122.2–3 No right conferred by application prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 4122.2–4 Action on defective application or where the lands applied for are not subject to grazing leasing.

Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, oth-

erwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

§ 4122.2–5 Conflicting applications.

In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands. After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 4122.2–6 Protests.

Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 4122.3 Leases.

§ 4122.3–1 Issuance of leases.

(a) *Conditions.* The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

(b) *Term.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

(c) *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on a form approved by the Director at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

(d) *Requirements and stipulations.* The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(e) *Subleases.* No part of the leased lands may be subleased.

§ 4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.

(a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock drive-

[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

way and public water reserve withdrawals may be leased in accordance with § 2321.3 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on a form approved by the Director (see § 4122.2–1) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

§ 4122.3–3 Rentals, schedule of grazing fees; billing notices; effect of failure to pay.

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5. Rental charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice.

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice whichever is the later, then the lease shall be considered as cancelled and all

rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

§ 4122.3–4 Assignment of lease.

The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form as approved by the Director, properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.

(a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lien or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

§ 4122.4 Construction, maintenance, and removal of improvements.

§ 4122.4–1 Permit required.

After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

§ 4122.4–2 Applications for permits and cooperative agreements.

Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the

public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on a form approved by the Director and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on a form approved by the Director.

§ 4122.4–3 Action on the application.

Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 4122.4–4 Removal of improvements.

(a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 4122.4–2. The amount of such compensation shall be determined in accordance with the procedure set forth in § 4122.3–5. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 4122.5 Supervision and management of leased lands.

§ 4122.5–1 Access.

The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

§ 4122.5–2 Inspection of leased premises.

The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 4122.5–3 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.

The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 4122.5–4 Temporary closing of leased area.

The State Director, in his discretion, may close temporarily to grazing, por-

tions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 4122.5–5 Crossing permits.

Upon application filed with the authorized officer by any person showing the necessity for crossing the Federal land with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

§ 4122.5–6 Trespass.

Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this Part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. (See § 9239.3–1 of this chapter for detailed trespass regulations.)

§ 4122.6 Cancellation.

Except as otherwise provided in § 4122.3–3, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement on a form approved by the Director entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

§ 4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on a form approved by the Director. When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on a form approved by the Director to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

§ 4122.8 Appeals; filing.

An appeal from any decision rendered pursuant to §§ 4122.0 to 4122.8, inclusive, may be taken to the Director and the Secretary, in accordance with appeals and contests (Parts 1840 and 1850 of this chapter). The appeal should be filed with the officer who rendered the decision.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circulars 2145, 2163 and 2180.

GPO 850-334

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2191]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

PAYMENT REQUIRED; EXCEPTIONS; DEFAULT; REVISION OF CHARGES

Subparagraph (2) of § 2234.1–6(c) is amended to read as follows:

§ 2234.1–6 Payment required; exceptions; default; revision of charges.

* * * * *

(c) * * *

(2) Where the permit, right-of-way, or easement is granted under the regulations in §§ 2234.2–2, 2234.2–4, 2234.2–5, 2234.3–1, and 2234.3–2.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

JUNE 5, 1965.

[F.R. Doc. 65–6073; Filed, June 10, 1965; 8:47 a.m.]

Published in 30 F.R. 7605, June 11, 1965 - Effective upon publication.

Circular Distribution List

GPO 850-934

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2192]

PART 3540—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3545—Fissionable Source Materials

ELIMINATION OF RESERVATIONS

The Act of August 30, 1954 (68 Stat. 934), amended the Atomic Energy Act of April 1, 1946 (60 Stat. 755), which provided for the issuance of supplemental patents for fissionable materials reserved in patents under provisions of the 1946 Act. The Atomic Energy Act was subsequently amended by the Act of August 19, 1958 (72 Stat. 632; 42 U.S.C. 2098(b)). This amendment remised, released, and quitclaimed such reserved fissionable materials to persons entitled thereto, thus eliminating the necessity for supplemental patents.

Accordingly, §§ 3545.1 and 3545.2 of 43 CFR are hereby revoked effective on date of publication of this notice in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

JUNE 5, 1965.

[F.R. Doc. 65-6074; Filed, June 10, 1965; 8:47 a.m.]

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Circular Distribution List

GPO 850-935

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular 2193]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4115—Records and Administrative Procedures

LICENSE AND PERMIT PROCEDURES; REQUIREMENTS AND CONDITIONS

Paragraph (e) (3) and (9) (i) of § 4115.2–1 are corrected to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

* * * * *

(e) *Terms and conditions.* * * *

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–3 (c) and (d).

* * * * *

(9) * * *

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a) (3) and (c), and 9239.3–2(e) of this chapter.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

JUNE 5, 1965.

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GPO 850-936

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER I—TECHNICAL SERVICES (9000)

[Group 9200 Protection]

[Circular No. 2194]

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

MEASURE OF DAMAGE; SALE, LEASE, PERMIT OR LICENSE TO TRESPASSERS

1. Section 9239.0–8 is amended by the addition of a clause to indicate application of Federal law when at variance with State law in determining the measure of damage. As amended, § 9239.0–8 will read:

§ 9239.0–8 Measure of damage.

The rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of Mason et al. v. United States (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed, unless by Federal law a different rule is prescribed or authorized.

2. Section 9239.0–9 is amended by changing several clauses to clarify application of trespass procedures. As amended paragraphs (a), (b), and (c) of § 9239.0–9 will read:

§ 9239.0–9 Sale, lease, permit, or license to trespassers.

(a) For the purpose of this section, a trespasser is any person, partnership, association, or corporation responsible for the unlawful use of, or injury to, property of the United States.

(b) The authorized officer may refuse to sell to a trespasser timber or materials, or to issue to him a lease, permit, or license if, after a demand for payment has been served by certified or registered mail on the trespasser, a satisfactory arrangement for payment of the debt due the United States has not been made within reasonable time, and there is reason for the authorized officer to believe payment will not be made. Satisfactory arrangement shall be deemed to have been made by:

(1) Payment by the trespasser of the amount found to be due by the authorized officer, by a final judgment of a court, or pursuant to a compromise settlement accepted by the United States; or

(2) Execution by the trespasser of a promissory note or installment agreement, satisfactory to the authorized officer, so long as the agreed-upon payments are made on schedule; or

(3) Delivery by the trespasser of a bond guaranteeing payment to the United States of the amount found to be due by the authorized officer or by a court of competent jurisdiction; or

(4) Cancellation of the debt due the United States by a discharge in bankruptcy.

(c) Notwithstanding the provisions of paragraph (b) of this section, the authorized officer may sell to a trespasser timber or materials or issue to him a lease, permit, or license for materials despite lack of a satisfactory arrangement for payment if such officer establishes in writing that:

(1) There is no other qualified bidder or no other qualified bidder will meet the high bid, and

(2) The sale, lease, permit, or license to the trespasser is necessary to protect substantial interests of the United States either by preventing deterioration of, or damage to, resources of the United States or by accepting an advantageous offer, and

(3) The timber management or other resource management program of the United States will not be adversely affected by the action.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

JUNE 24, 1965.

[F.R. Doc. 65–6895; Filed, June 30, 1965; 8:46 a.m.]

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GPO 851-278

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2195]

PART 3610—MINERAL MATERIALS DISPOSALS

Subpart 3610—Mineral Materials Disposals; General

Subpart 3611—Mineral Material Sales

DISPOSAL OF MINERAL MATERIALS

1. Section 3610.1 is amended by the addition of a paragraph (d).

§ 3610.1 Mineral materials disposal policy; limitations.

* * * * *

(d) Any subsequent settlement, location, lease, sale, or other appropriation under the general land laws, including the mineral leasing and mining laws, of lands covered by a materials sale contract, shall be subject to the outstanding contract of sale. Unless otherwise provided by contract, the contract purchaser, notwithstanding any subsequent appropriation under other provisions of the general land laws, shall have the right to extract and remove the materials until the termination of the contract. During the term, the purchaser shall have the right to use and occupy so much of the described land as is reasonably incidental and necessary to the fulfillment of the contract. All contracts of sale shall be subject to the continuing rights of the United States to use the surface and to issue leases, permits, and licenses involving the use and occupancy of the surface, provided that such subsequently authorized use shall not endanger or materially interfere with the purchaser's production or removal of the materials under contract.

2. Section 3611.6 is amended as follows:

§ 3611.6 Deposits with bids.

(a) For cash sales a bid deposit of not less than 10 percent of the appraised value of the mineral materials offered is required. The authorized officer may, at his discretion, require larger deposits.

(b) For installment sales, the bid deposit shall be not less than the amount of the first installment required under § 3611.8–4 and specified in the advertisement of the sale.

(c) Sealed bids must be accompanied by the deposit. For mineral materials offered at oral auction, bidders must make the deposit prior to the opening of the bidding.

(d) Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the U.S. Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, shall be returned. The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer. If the contract is not awarded to the high bidder his deposit will be returned, and the next successive high bidder will be called upon for a remittance of the full amount of the first installment.

3. Section 3611.8–4 is amended as follows:

§ 3611.8–4 Payments.

(a) Mineral materials shall not be removed unless advance payment has been made as provided in the contract.

(b) For sales of not more than $2,000 the full amount shall be paid at the execution of the contract.

(c) Fixed unit prices in excess of $2,000 may be paid by installments. Installments shall be at least 10 percent of the total purchase price or $1,000, whichever is less. As provided in § 3611.6, the first installment must be paid as a deposit when the bid is submitted. The second installment must be paid prior to the commencement of removal operations. Remaining installments shall be due and payable without notice whenever the value of the material removed shall equal the sum of the second and subsequent installments paid by the purchaser. The total amount of the purchase price must be paid prior to 60 days before the expiration date of the contract. The purchaser shall not be entitled to a refund on a fixed unit sale even though the amount of material removed or designated for removal may be less than the estimated total volume shown in the contract.

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Circular Distribution List

(d) Sales for the duration of production or sale of all the mineral materials in a specified area which exceed $2,000 shall be conditioned on the following terms of payment.

(1) A first installment of not less than $500 shall be paid upon the execution of the contract. Remaining installments in amounts to be specified shall be due and payable without notice whenever the value of the material removed shall equal the sum of the first and subsequent installments. Mineral materials shall not be removed unless the advance installment has been made as provided in the contract.

(2) All contracts for sale of material under this subparagraph shall provide for periodic reappraisal of the mineral material. The frequency of the reappraisal shall be specified in the sale contract. If, upon termination, the total payments made under the contract exceed total value of the material removed, such excess shall be returned to the purchaser, except for payments made in lieu of minimum production pursuant to subparagraph (3) of this paragraph.

(3) Annual production shall be required in an amount sufficient to return to the United States a sum of money equal to the first installment. In lieu of such minimum production there shall be an annual payment in the amount of the first installment which will not be credited to future production. Payments for or in lieu of minimum annual production shall be due and payable and must be received by the authorized officer on or before the anniversary date of the execution of the contract, failing which the contract shall be considered breached and terminated, and all money paid pursuant to the contract shall be forfeited.

(e) The purchaser shall be required to make a report of operations under his contract with each installment payment, and to provide verification of the amount of material removed when called upon to do so by the authorized officer.

4. Section 3611.8–5 is amended as follows:

§ 3611.8–5 Time for removal.

Time for removing materials sold, except that sold under a duration of production contract or contract for the sale of all material within a specified area, shall not exceed a period of 2 years except that such time for removal may be extended as provided in § 3611.8–6.

STEWART L. UDALL,
Secretary of the Interior.

JUNE 25, 1965.

[F.R. Doc. 65–6957; Filed, July 1, 1965; 8:46 a.m.]

Replaced by 2232

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2196]

PART 2030—SPECIAL CONSIDERATIONS

Subpart 2033—Veterans

MINING CLAIMS

Paragraph (2) of § 2033.2–7(b) is amended to read as follows:

§ 2033.2–7 Mining claims.

* * * * *

(b) *Notice of military service.* * * *

(2) If application for patent to the mining claim has been made, notice to the Bureau of Land Management of the applicant's entrance into military service is desirable, but not mandatory.

STEWART L. UDALL,
Secretary of the Interior.

JULY 8, 1965.

[F.R. Doc. 65–7512; Filed, July 15, 1965; 8:47 a.m.]

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Circular Distribution List

Circular No. 2197

GENERAL PROCEDURES
for
GRAZING DISTRICT ADVISORY BOARD ELECTIONS

U.S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT

Charles H. Stoddard, Director

July 1965

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

GENERAL PROCEDURES FOR GRAZING DISTRICT ADVISORY BOARD ELECTIONS

Pursuant to the authority delegated to the Director, Bureau of Land Management through the provisions of the grazing regulations 43 CFR 4114.1–2, notice is hereby given that the General Procedures for Grazing District Advisory Board Elections, as approved December 12, 1958, are revised to read as indicated below. These procedures shall be followed for all grazing district advisory board elections, except wildlife representatives. The regulations governing appointment of advisory board members, oath, and term of office, removal and vacancies, organization and duties of district advisers are found in 43 CFR 4114.1.

1. Definition of Terms; Qualification Requirements.
2. General.
3. Optional Election Procedures.

OPTION I—NOMINATING AND VOTING IN PERSON

(a) Nominations.
(b) Voting.
(c) Action following election.

OPTION II—NOMINATING AND VOTING BY MAIL

(a) Nominations.
(b) Voting.
(c) Action following return of ballots.

OPTION III—NOMINATING IN PERSON AND VOTING BY MAIL

(a) Nominations.
(b) Voting.
(c) Action following return of ballots.

4. Amendments.
5. Status of District Advisers.

1. Definition of Terms; Qualification Requirements:

A. *Nominee.* A qualified person who is nominated. To qualify as a nominee, a person must be a holder of a regular license or permit in the district, predominate in the class of livestock (cattle or sheep) on the basis of the number of AUM's of Federal Range qualifications,[1] and make grazing use in the same precinct[2] as the district adviser position. At the option of the District Manager following recommendation of the Advisory Board, precinct representation may be designated as being unclassified as to cattle or sheep.

To qualify as a nominee for a free use district adviser position, a person must be the holder of an active free use grazing license for use within the district.

Seconding of nominations will not be required.

B. *Nominator.* A qualified person who nominates a nominee. Qualifications of a nominator are the same as a nominee.

C. *Elector.* One who is qualified to elect. The qualifications of an elector are the same as those of a nominee except that he need not be from the precinct since voting is districtwide. An elector may cast only one vote for each district adviser position and vote only for candidates representing the class of livestock in which he predominates as defined under paragraph A of this section.

D. *Candidate.* One who qualified as a nominee and who is nominated in accordance with the election option which is followed.

E. *District Manager.* Is the manager of the district and is the person who is the authorized representative of the Bureau of Land Management to conduct Advisory Board elections.

F. *Judges.* Persons who are selected by the district manager or his authorized representative to certify nominations and/or elections. A judge may be selected districtwide and must qualify as an elector. There shall be at least two judges at each nomination and election place or places.

G. *Registration list* (Register). All registration lists will be prepared on a form approved by the Director. This provides a listing of qualified persons developed for the following uses:

For nominations. This is a list by precinct[3] of regular licensees, and permittees, or qualified representative, with a breakdown by class of livestock (1) cattle and horses and (2) sheep and goats; the free use licensees will not be broken down by class of livestock or precinct and will be listed separately.

[1] Does not include suspended nonuse.

[2] This precinct requirement would not apply to districtwide positions.

[3] For districtwide positions the list would be by district.

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Circular Distribution List

For elections. This is a districtwide list of regular licensees, and permittees, or their qualified representative, with a breakdown by class of livestock (1) cattle and horses and (2) sheep and goats; the free use licensees will not be broken down by class of livestock or precinct and will be listed separately. This is merely a consolidation of the nomination lists.

2. General:

A. A person who has interests in more than one license or permit can vote only once in a given election except that in cases where the operations under each license or permit are distinctly separate entities or in situations where more than one district is involved, then paragraph J of this section shall apply.

B. Where the license or permit involves two or more persons, the parties involved shall designate in writing one of the members to represent their operation in district adviser elections. This name shall be that placed on the registration lists.

C. The holder of a regular license or permit may be represented in advisory board elections by a person designated in writing who may otherwise be authorized to do business with the Bureau for the holder's operation, i.e. Range Manager, Foreman, Attorney, etc. This name shall be placed on the registration lists.

D. A person whose name does not appear on the registration list shall not be allowed to nominate or vote, except where the district manager determines that such name was omitted by error; if otherwise, the nomination or vote shall be void.

E. If an individual is nominated for more than one precinct or for a precinct and a districtwide position, he must designate the position for which he wishes to be the nominee prior to balloting.

F. In the case of a tie vote, the district manager, in the presence of the judges, shall make a choice by lot.

G. A free-use licensee is eligible to nominate and vote for only one free-use candidate and for no other candidate.

H. The district manager will give adequate public notice of the time and place of the nomination and election of district advisers.

I. A minor may nominate or vote if otherwise qualified, except that upon request of his natural or legal guardian, the guardian may nominate or vote in behalf of the minor.

J. A person who is a licensee or permittee in more than one district may participate in the election of district advisers in each district. In cases where he is not the sole holder of any such license or permit, then paragraph B or C of this section shall apply.

K. Proxies will not be permitted in nominations or voting.

3. Optional Election Procedures:

The district manager, after recommendation by the advisory board and concurrence of the State Director, shall designate one of the following optional election procedures to be followed in the election of grazing district advisers except the wildlife member:

Option I

NOMINATING AND VOTING IN PERSON

A. *Nominations.* (1) The district manager will notify all persons qualified to be nominators and/or electors of the time and place or places where the nomination and election meeting or meetings will be held.

(2) Prior to the meetings, the district manager will prepare the registration lists.

(3) The persons qualified to be nominators shall gather at the time and place or places designated in the notice.

(4) Judges will be designated by the district manager or his authorized representative at each meeting place if there is more than one.

(5) Persons then present who are qualified as nominators may nominate qualified candidates for district advisers. Nominations will cease at the time previously designated by the district manager or his authorized representative.

(6) The judges will complete a "certificate of nominations" in a single copy on a form approved by the Director and present it to the district manager or his authorized representative.

B. *Voting.* (1) Polling places shall remain open on the day of the election from 2 p.m. to 5 p.m. or until all electors present at 5 p.m. shall have voted unless the district manager, after recommendation by the advisory board, has designated other hours.

(2) Registration lists of electors must be available.

(3) A list of candidates should be posted at the meeting place.

(4) The judges designated may be the same persons who were judges for taking nominations.

(5) No elector shall receive a ballot until he has been qualified and has signed the registration list (Register).

(6) Write-ins are permissible; however, the write-in candidate must qualify the same as a nominee and the write-in elector must qualify as to class of livestock.

(7) Before receiving a ballot, any elector may be challenged by any other elector qualified in the district and, thereupon, the judges may require the challenged elector to answer such questions concerning his qualification to vote as they deem necessary. Upon his failure or refusal to answer the questions satisfactorily, he shall not be permitted to register but he may, upon request, receive and mark a ballot which shall remain uncounted until his right to vote has been determined by the recommendation of the judges and decision of the district manager.

(8) Any candidate may designate a qualified elector as his representative to remain in the polling place during the casting and counting of the ballots and to act as challenger.

C. *Action following election.* (1) After the polls have been closed and those present have voted, the judges will count the votes and prepare a "report of the election" to the district manager or his authorized representative in a single copy of a form approved by the Director. The judges shall attach to this report the ballots and registration list.

(2) The district manager will complete a "notice of results" of the advisory board election in triplicate on a form approved by the Director and submit two copies to the State Director for his consideration and approval in accordance with 43 CFR 4114.1–3.

Option II

NOMINATING AND VOTING BY MAIL

A. *Nominations.* (1) The district manager will notify each person qualified to be a nominator, by mail at his address of record, including therewith a list of persons qualified as nominees. Such notice will explain his opportunity to nominate qualified persons of his choice.

(2) Nominations may be by letter or by forms provided with the nomination notice; in either case they must be signed by the nominator.

(3) Nominations must be returned by the date shown on the notice, and within five (5) days of this date the nominations will be assembled and certified as to qualifications of the nominees and nominators by the judges previously selected in accordance with paragraph F of section 1 hereof.

(4) The judges will complete a "certificate of nominations" in a single copy on a form approved by the Director and present it to the district manager or his authorized representative.

(5) The district manager will contact each nominee,on the "certificate of nominations" and give him the opportunity to decline (in writing) the nomination.

B. *Voting.* (1) From the certificate of nominations, the district manager will prepare ballots listing the name of the qualified candidates by class of livestock and precinct if applicable. Ballots should provide adequate space for write-in candidates.

(2) Within fifteen (15) days following the nomination period, the district manager will mail the ballots with necessary instructions and providing for a secret ballot. The elector shall complete his ballot and shall return it in the official envelope provided for its return. The envelope must be signed by the elector in the space provided therefor; failure to sign will void the ballot.

C. *Action following return of ballots.* (1) Ballots must be returned by the date given in the instructions, and within five (5) days of this date the ballots will be counted and checked against the registration list (Register) by the election judges.

(2) The judges will complete a "certificate of returns" in a single copy on a form approved by the Director and submit it to the district manager or his authorized representative together with the ballots and registration list.

(3) The district manager will complete a "notice of results" of the advisory board election in triplicate on a form approved by the Director and submit two copies to the State Director for his consideration and approval in accordance with 43 CFR 4114.1–3.

Option III

NOMINATING IN PERSON AND VOTING BY MAIL

A. *Nominations.* Nominations shall be conducted in accordance with procedures for nominations, Item A under Option I above.

B. *Voting.* Within fifteen (15) days following the nomination meeting or meetings, the district manager will prepare and mail ballots to all electors in accordance with the procedures for Voting, Item B under Option II above.

C. *Action following return of ballots.* The ballots shall be counted, the votes tabulated, and certificates of returns executed in accordance with the pro-

cedures in Item C of Option II above.

4. Amendments:

These general procedures may be amended, modified, or supplemented by order of the Director, Bureau of Land Management, effective upon publication in the FEDERAL REGISTER.

5. Status of District Advisers:

Members of District advisory boards are Federal employees and are, therefore, subject to the conflict of interest statutes. Pursuant thereto, each elected district advisor will be required to file with the State Director a confidential statement of employment and financial interest prior to his appointment.

CHARLES H. STODDARD,
Director.

JUNE 21, 1965.

[F.R. Doc. 65-6674; Filed, June 24, 1965; 8:46 a.m.]

JULY 7, 1965.

[F.R. Doc. 65-7332; Filed, July 12, 1965; 8:47 a.m.]

GPO 851-790

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular 2198]

PART 16—CONSERVATION OF HELIUM

Miscellaneous Amendments

Section 16.4 as it presently appears will be deleted and §§ 16.5 and 16.6 will be renumbered §§ 16.4 and 16.5, respectively.

Accordingly, the amended §§ 16.1–16.3 are adopted as set forth below and will become effective upon publication in the FEDERAL REGISTER.

§ 16.1 Agreements to dispose of helium in natural gas.

(a) Pursuant to his authority and jurisdiction over Federal lands, the Secretary may enter into agreements with qualified applicants to dispose of the helium of the United States upon such terms and conditions as he deems fair, reasonable, and necessary to conserve such helium, whenever helium can be conserved that would otherwise be wasted or lost to Federal ownership or use in the production of oil or gas from Government lands embraced in an oil and gas lease or whenever federally owned deposits of helium-bearing gas are being drained. The precise nature of any agreement will depend on the conditions and circumstances involved in that particular case.

(b) An agreement shall be subject to the existing rights of the Federal oil and gas lessee.

(c) An agreement shall provide that in the extraction of helium from gas produced from Federal lands, it shall be extracted so as to cause no delay, except that required by the extraction process, in the delivery of the residue of the gas produced from such lands to the owner thereof. Title will be granted to the helium which is physically reduced to possession.

§ 16.2 Applications for helium disposition agreements.

The application for a helium disposition agreement need not be in any particular form, but must contain information sufficient to enable the Secretary to determine that the proposal will conserve helium that will otherwise be wasted, drained, or lost to Federal ownership or use, and to evaluate the suitability of the proposal.

§ 16.3 Terms and conditions.

The applicant must agree not to develop wells on Federal land with the principal purpose of recovering the helium component of natural gas unless permission to do so has been expressly granted by the Secretary.

(R.S. 2478, as amended, 60 Stat. 950; 74 Stat. 918, 922; 43 U.S.C. 1201, 30 U.S.C. 181, 50 U.S.C. 167a, 167g)

STEWART L. UDALL,
Secretary of the Interior.

JULY 16, 1965.

[F.R. Doc. 65–7753; Filed, July 22, 1965; 8:46 a.m.]

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Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2199]

PART 2230—SPECIAL USES

Subpart 2232—Recreation and Public Purposes Act

APPLICATIONS FOR TRANSFER, CHANGE OF USE, AND FOR RENEWAL OF LEASES

Superseded by Circ 2221

Subparagraph (6) of § 2232.1–2(a) is amended to read as follows:

§ 2232.1–2 Applications for transfer, change of use, and for renewal of leases.

(a) * * *

(6) Prior to approval of an application filed under subparagraph (2) of this paragraph, the land may be reappraised in accordance with § 2232.2–3 and the beneficiary required to make such payments as are found justified by such reappraisal.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

JULY 20, 1965.

[F.R. Doc. 65–7797; Filed, July 23, 1965; 8:46 a.m.]

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Circular Distribution List